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The following releases relate to self-regulatory rule proposals and/or adoptions

34-17396	
33-6273	Deferring the effective date of the quarterly reporting requirements for smaller life insurance companies whose shares are not actively traded.
33-6274	Consideration of the impact of the Small Business Investment Incentive Act of 1980 on certain exemptions from the registration provisions of the 1933 Act. [S7-867; Comment Period Expires February 20, 1981.]
33-6275	Proposed Amendments to the rules, forms, and disclosure requirements under Regulation A. [S7-868; Comment PeriodExpires March 23, 1981.]
33-6276	Proposed revision of Regulation S-K and Guides for the preparation and filing of registration statements and reports. [S7-869; Comment Period Expires March 6, 1981.]
34-17390	Denial of petition for rulemaking concerning the need for consistent disclosure.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6273/December 22, 1980

SE 1.29:

SECURITIES EXCHANGE ACT OF 1934
Release No. 17397/December 22, 1980

QUARTERLY REPORTING REQUIREMENTS FOR SMALLER LIFE INSURANCE COMPANIES WHOSE SHARES ARE NOT ACTIVELY TRADED

ACTION: Rule amendments.

SUMMARY: The Commission is further deferring, until 1982, the effective date of the quarterly reporting requirements for smaller life insurance companies whose shares are not actively traded. Such additional delay is necessary to allow sufficient time for the Commission to consider establishing a system of classifying small issuers for purposes of modifying certain reporting requirements under the Securities Exchange Act of 1934.

EFFECTIVE DATE: On publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Michael J. Eizelman, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION: On September 20, 1976, the Commission issued Accounting Series Release No. 197 [41 FR 42645][1] to require quarterly financial reporting, on Form 10-Q, [17 CFR 249.308a] life insurance companies and holding companies having only life insurance subsidiaries. In that release the Commission stated:

> Recognizing that some life insurers do not presently prepare quarterly financial information, the Commission believes that the reporting responsibilities imposed by these amendments should first be applied to those life insurance companies whose activities are most closely followed by analysts and investors. At the same time and taking into account the lead time and start-up requirements for those companies not currently preparing quarterly financial information on a generally accepted accounting principles (GAAP) basis, the Commission has decided to defer the effective date of these amendments until 1978 for life insurance companies whose shares are not actively traded. In addition, the Commission notes that its Advisory Committee on Corporate Disclosure is reviewing the overall question of the reporting responsibilities of smaller companies.

In Accounting Series Release No. 228, October 7, 1977, [42 FR 54531], the Commission further deferred through 1978 the effective date of these requirements. Subsequently, on November 3, 1977, the Commission's Advisory Committee on Corporate Disclosure issued its report which included a recommendation that the Commission hold public hearings to determine: (1) whether and to what extent, the Commission should attempt to define a category of "small companies" for the purpose of requiring less burdensome reporting; (2) how such a classification, if desirable and possible, should be defined; and (3) if definition is possible, what reductions of reporting requirements are possible, consistent with the purpose of the Federal securities laws.

During April and May of 1978 the Commission staff conducted a series of public hearings in several parts of the country at which the problems of small companies were discussed. In Accounting Series No. 259, December 28, 1978 [44 FR 1727], and in Securities Act Release No. 6170, December 19, 1979 [44 FR 76777], the Commission again deferred, through 1980, the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded. The reason for these deferrals was to allow the staff time to review the testimony taken at the hearings to ascertain future policies relating to small companies generally and in particular to consider the development of one or more classes of small issuers for purposes of reducing the reporting requirements under Sections 13 and 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78m and 78o(d)]. As a result of these efforts, numerous changes in the Commission's rules and regulations have occurred which impact significantly on small businesses. In Securities Exchange Act Release No. 16886, June 2, 1980 [45 FR 40145], the Commission published advance notice of proposed rulemaking regarding the classification of small issuers which might have different reporting and other obligations under the Exchange Act. The Commission asked commendtators to recommend specific criteria to be used to define small issuers and which reporting requirements, if any, might be modified for them. The Commission intends to make specific proposals in this area early in 1981. Such proposals may have a direct impact on smaller life insurance companies. Accordingly, the Commission has decided to further defer from fiscal years ending after December 15, 1981 to years ending after December 20, 1982 the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded.

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[1] Certain corrections to that release were made in Accounting Series Release No. 218 [42 FR 27879], May 23, 1977.

For the reasons stated above and pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), the commission finds for good cause that notice and public procedure on these rules amendments are impracticable, unnecessary and contrary to the public interest and that there is good cause for making these amendments effective immediately.

TEXT OF AMENDMENTS

The Commission hereby amends paragraphs (c)(1) of §§240.13a-13 and 15d-13 of 17 CFR Part 240, to defer the effective date specified therein as given below.

PART 240-GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.13a-13 Quarterly reports on Form 10-Q (§249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 20, 1982, if they do not meet the tests specified in Item 12, paragraph (a)(1)(i), of §229.20; or

* * * * *

§240.15d-13 Quarterly reports on Form 10-Q (§249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 20, 1982, if they do not meet the test specified in Item 12, paragraph (a)(1)(i), of §229.20; or

* * * * *

AUTHORITY: These amendments are adopted pursuant to authority in Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 781, 78m, 78o(d) and 78w(a)] of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6274/December 23, 1980

CONSIDERATION OF THE IMPACT OF THE SMALL BUSINESS INVESTMENT INCENTIVE ACT OF 1980 ON CERTAIN EXEMPTIONS FROM THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OF 1933

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering the relationship among certain exemptions from the registration provisions of the Securities Act of 1933 (the "1933 Act") and the efficacy of such exemptions as they relate to the capital formation needs of small business. The present inquiry is prompted by the recent enactment of the Small Business Investment Incentive Act of 1980 which includes two statutory changes in the 1933 Act that have an impact on small business. The first is the new Section 4(6) of the 1933 Act which provides an exemption from the registration requirements of that Act for offers and sales of securities by an issuer to accredited investors if the aggregate amount of securities offered is $5 million or less and if there is no public solicitation. The second is an increase from $2 milion to $5 million in the ceiling on the Commission's authority under Section 3(b) of the 1933 Act to exempt small offerings from the registration requirements of that Act.

The Commission is requesting commentators to focus on the interrelationship between the recently

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enacted statutory exemption contained in Section 4(6) of the 1933 Act and the Commission's other exemptive rules, especially Rules 146 and 242. The Commission is also requesting comments on the adequacy of the present ceiling limitations included in the exemptions under Section 3(b) and the extent, if any, to which they should be increased. The Commission intends to consider these comments in deciding whether to propose any amendments to existing rules under the 1933 Act.

DATE: Comments must be received on or before February 20, 1981.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-867 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272-2644) Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is considering the interrelationship among certain exemptions from the registration provisions of the Securities act of 1933 (the 1933 "Act") [15 U.S.C. 77a *et seq.*], particularly as they relate to the capital formation needs of small business. The present inquiry is prompted by the recent enactment of the Small Business Investment Incentive Act of 1980 (the "1980 Act") [Pub. L. No. 96-477 (October 21, 1980)].

New Section 4(6) of the 1933 Act added by the 1980 Act[1] raises certain questions concernig what the appropriate relationship should be between Section 4(6) and the Commission's other exemptive rules, including Rules 146 [17 CFR 230.146], 240 [17 CFR 230.242], and 242 [17 CFR 230.242]. Section 4(6) provides an exemption from the registration provisions of the 1933 Act for transactions involving offers and sales of securities by an issuer solely to one or more "accredited investors"[2] if the aggregate offering price does not exceed the amount allowed under Section 3(b) of that Act.[3] No advertising or public solitation is permitted in connection with such transactions, and the issuer is required to file a notice of such sales with the Commission on such forms as the Commission shall prescribe.[4]

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[1] The provisions of Section 4 of the Securities Act provide in pertinent part:

The provisions of Section 5 shall not apply to -

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commisison as the Commission shall prescribe.

[2] New Section 2(15) of the Securities Act provides;

(15) the term "accredited investor" shall mean -

(i) a bank as defined in section 3(a)(21) of the Act whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section (2)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Securities Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

[3] As amended by Section 301 of the 1980 Act, the ceiling amount of Section 3(b) is increased to $5,000,000.

In addition, the increase in the Section 3(b) ceiling from $2,000,000 to $5,000,000 raises the question of whether, and to what extent, the Commission should raise the ceiling on certain exemptive provisions, including Regulation A, promulgated under Section 3(b). A corollary issue raised by the Section 3(b) increase is the relationship of the offering limit on Form S-18, which is a simplified registration form available to certain corporate issuers going public for the first time [17 CFR 239.29], to the ceiling amount under Regulation A.

Therefore, the Commission is today seeking comments and guidance from interested persons as to what the appropriate relationship should be between Section 4(6) and other exemptive provisions and what the appropriate ceiling amounts should be for the various Section 3(b) exemptions and Form S-18.[5] Any changes in the rules would of course, be made only to the extent consistent with the public interest and the protection of investors.

A. *Regulatory Framework of the 1933 Act Exemptions*

Absent an available exemption, the 1933 Act requires that a registration statement must be filed with the Commission disclosing prescribed categories of information before securities may be offered for sale to the public. The securities cannot be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information in the registration statement. Congress, however, recognized that there are certain situations "where there is no practical need for * * * [registration] or where the public benefits [therefrom] are too remote".[6] Accordingly, a number of exemptions to the registration requirements are contained in the 1933 Act. The exemptions which in the past have been most typically relied upon by small business and which are the subject of this inquiry are those provided by Sections 3(b) and 4(2).[7]

1. *Section 3(b)*

The Commission is authorized under Section 3(b) of the 1933 Act to exempt securities from registration if it finds that registration for these securities is not necessary in the public interest because of the small amount involved or the limited character of the public offering.[8]

Pursuant to this authority, the Commission has adopted various exemptive rules and regulations, the most significant of which from a small business standpoint are Regulation A [17 CFR 230.251-264], Rule 240 and Rule 242.

Regulation A permits an issuer to sell securities in an unregistered public offering, up to an aggregate amount of $1.5 million in any one year, provided certain conditions are met. Among other things, a notification and offering circular supplying information about the issuer and the securities offered must be filed with the regional office of the Commission for the region in which the issuer's principal business operations are conducted. The offering circular must be furnished at or prior to the time any written offer of securities is made.

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[4] In order to permit issuers to utilize Section 4(6) immediately, the Commission recently adopted, on an interim basis, a notice-of-sales form [hereinafter referred to as "Form 4(6)"], to be used by issuers relying on the new statutory exemption. Securities Act Release No. 6256 (November 7, 1980) [45 FR 75182].

[5] On October 16, 1980 the Commission announced that it was undertaking a study, supported jointly by the Commission and the Small Business Administration, which will examine the major exemptions from registration under the Securities Act of 1933 focusing primarily on the "private placement" exemption and on the financing needs of small businesses. The project is being conducted by the Directorate of Economic and Policy Analysis and that office will prepare a series of reports during the next 12 months which will present a descriptive profile of the issuers of securities utilizing each exemption, as well as data regarding characteristics of the offerings, aftermarket experience and compliance costs.

[6] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 5 (1933).

[7] It should be noted that these sections do not provide an exemption from the anti-fraud provisions of the Securities Act or from the civil liability provisions of Sections 12(2) of the 1933 Act or other provisions of the Federal securities laws.

[8] As stated earlier, recent Congressional action increased the ceiling to $5,000,000; *supra,* note 3.

Simultaneous with the consideration of the primary exemptions herein, the Commission has announced in a separate release that it is proposing substantive revisions to the disclosure requirements of Regulation A designed to codify disclosure policies and practices currently followed with respect to Regulation A.[9] Such codification is especially appropriate if the Regulation A ceiling is to be increase materially from the current level of $1,500,000.

Rule 240 provides a conditional exemption from registration for limited offers and sales of small dollar amounts of securities by small, closely-held businesses. The conditions which must be satisfied in order to use the rule are: (1) no more than $100,000 of securities of the issuer may be sold in reliance on the rule or otherwise without registration within a preceding twelve month period; (2) the securities may not be offered and sold by means of general advertising or general solicitation; (3) no commission or similar remuneration may be paid by the issuer for soliciting buyers; (4) both immediately before and after the offering the securities of the issuer must be beneficially owned by fewer than 100 people; and (5) a notice on Form 240 [17 CFR 239.240] must be filed with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted within ten days after the close of the month in which a sale in reliance on the rule is made.

Rule 242, promulgated by the Commission on January 17, 1980, exempts certain corporate issuers from the regiatration provisions of the 1933 Act for transactions involving offers and sales of securities up to an aggregate amount of $2 million in any six-month period[10], to an unlimited number of accredited investors and 35 non-accredited persons, provided that (a) there is no general advertising or general solicitation in connection with the offering; (b) certain specified written information is delivered in offerings involving non-accredited purchasers; and (c) a notice is filed on Form 242 [17 CFR 239.242]. Unlike Rule 240, a commission or similar remuneration may be paid by the issuer for soliciting buyers. The availability of the rule is limited to "qualified issuers" which are defined as any domestic or Canadian corporation which is not an investment company, not engaged in significant oil and gas or mining operations, and is not a subsidiary of an issuer which would not be qualified to use the exemption.

2. Section 4(2) and Rule 146

Section 4(2), commonly referred to as the "private-offering" exemption, provides an exemption from registration for "transactions by an issuer not involving any public offering. The primary consideration, as established by the Supreme Court in the *Ralston Purina* case[11] is whether the offerees need the protections afforded by the 1933 Act as evidenced by whether the offerees have "access" to the same kind of information that registration would disclose and whether they are able to fend for themselves.

In an effort to introduce certainty into the private offering exemption, the Commission adopted Rule 146 which provides that transactions involving the offer and sale of securities shall be deemed not be involve any public offering within the meaning of Section 4(2) of the 1933 Act if they are part of an offering that meets all the conditions of the Rule. When Rule 146 is used as the basis for an exemption, there can be no general advertising or solicitation in connection with the transactions; offers and sales may only be made to persons the issuer reasonably believes have the requisite knowledge and experience in financial matters or who can bear the economic risks; sales may only be made to such persons except that persons meeting only the economic risk test must also have an offeree representative capable of providing the requisite knowledge and experience; offerees must have access to or be furnished with information comparable to that which would be contained in a registration statement;[12] there may be no more than 35 purchasers; the issuer must inform each offeree that he must continue to bear the risk of the investment indefinitely since resales can only be effectuated through registration or an exemption therefrom; and reasonable care must be taken by the issuer to ensure that purchasers are not taking with a view to distribution. Issuers relying on the rule must file a notice of such sales with the Commission on Form 146 [17 CFR 239.146].

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[9] Securities Act Release No. 6275 (December 23, 1980).

[10] As originally adopted paragraph (c) of Rule 242 specified that the aggregate amount of an issue of securities could not exceed the amount allowed under Section 3(b) of the 1933 Act which at that time was $2 million. However, the Rule was amended as a result of the recent increase in the Section 3(b) ceiling to $5 million to maintain the $2 million level originally prescribed by the Commission. The amendment is designed to maintain the status quo pending review of all ceiling limitations under Section 3(b). *See* Securities Act Release No. 6250 (October 23, 1980) [45 FR 71775].

[11] *Securities and Exchange Commission* v. *Ralston Purina Co.*, 346 U.S. 119 (1953).

B. *Scope of Inquiry*

The Commission is interested in obtaining the written views of interested members of the public on the issues set forth below. Although the principal purpose of this release is to focus on those questions which are raised as a result of the recent enactment of the Section 4(6) exemption and the increase in the limit of Section 3(b) to $5,000,000, commentators are encouraged also to provide their views on the broader question as to whether the exemptions under the 1933 Act provided by Rules 240, 242, 257 and Regulation A and Rule 146 along with the newly created Section 4(6) exemption considered together provide a coherent scheme for relieving issuers of the burdens of the full scale registration provisions of the 1933 Act in connection with the raising of capital, particularly by smaller companies, consistent with adequate investor protection and, if not, what steps the Commission should take to make the scheme more coherent. Thus, when answering the following specific questions, commentators are invited to address the role of such exemptions in the general pattern of exemptive provisions under Sections 3(b) and 4(2).

1. *RELATIONSHIP BETWEEN RULES 146, 242 AND SECTION 4(6)*

The first set of issues the Commission is requesting commentators to focus on relates to the interrelationship between Section 4(6) and Rules 146 and 242. These three exemptions are all private offering exemptions in that they prohibit public solicitation and general advertising and limit the offerees and/or purchasers to specific types of individual and/or to a specified maximum number of individuals. A comparative chart outlining the exemptive provisions of these three exemptions is attached as Appendix A.

Rule 242 was designed to alleviate some of the concerns raised by various commentators at the small business hearings regarding certin problems in complying with Rule 146. Commentators at the hearings consistently indicated that the provisions of Rule 146 presented compliance problems for smaller issuers which result in uncertainity as to whether the exemption is available.[13] For example, it was noted that Rule 146 requires issuers to make a subjective determination concerning the sophistication of each offeree and each purchaser,[14] and if a mistake is made with respect to an offeree who declines to purchase, purchasers may still have the right to rescind the transaction because of the violation.[15]

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[12] Where, however, an offering does not exceed $1.5 million the rule requires the issuer to furnish only the information required by Schedule I of Regulation A. *See* Securities Act Release No. 5975, (September 8, 1978) [43 FR 41193].

[13] Summary of Comments Relating to Small business Hearings and Proposed Form S-18, Division of Corporation Finance, Securities and Exchange Commission, File No. S7-734, at 148 [hereinafter cited as "Small Business Hearings"].

[14] Rule 146(d)(1) provides:

(d) Nature of offerees. The issuer and any person acting on its behalf who offer, offer to sell, offer for sale or sell the securities shall have reasonable grounds to believe and shall believe:

(1) Immediately prior to making any offer, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree is a person who is able to bear the economic risk of the investment; and

(2) Immediately prior to making any sale, after making reasonable inquiry, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree and his offeree representatives(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment and that the offeree is able to bear the economic risk of the investment.

In addition, it was felt that the informational requirements of Rule 146(e) created uncertainty by requiring that issuers which do not file periodic reports with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29] (June 4, 1975) furnish their offerees with substantially the same information "as would be required to be included" in a registration statement or, if the offering does not exceed $1,500,000, the same information "as required to be included" by Schedule I of Regulation A.

Rule 242 responded to these criticisms by removing any sophistication test for either offerees or purchasers and by indicating more specifically the type of information that must be furnished to purchasers. The concept of accredited investor was introduced for the first time in Rule 242 and the rule contains no limitation on the number of accredited investors who can purchase securities. In addition, if only accredited investors are involved in an offering there is no specific requirement to furnish them with information. This is based on the assumption that accredited investors are in a position to ask for and obtain whatever information they believe is relevant. The rule also provides that securities can be sold to an additional 35 individuals and specifies that these individuals should be furnished the same kind of information as required by Form S-18, to the extent material.

Section 4(6) also includes the concept of accredited investors and a new Section 2(15) defines accredited investors in substantially the same way as Rule 242, except that $100,000 purchasers and directors and executive officers of the issuer are not included in the definition as they are in Rule 242. The Commission is given rulemaking authority in Section 2(15) to expand the definition.

In adopting the ceiling limitations placed on Rule 242 offerings, it was the Commission's intention that the Rule be primarily of benefit to small companies, providing a relativelty objective and less costly method of raising capital. Apparently a similar legislative intent was present in the enactment of Section 4(6). On the other hand, Rule 146 is available to both small and large issuers and can be used to raise an unlimited amount of capital.

The Commission invites comments on the following concepts of "accredited investor," "qualified issuer," and "issue of securities" as these concepts currently exist in the three exemptions.

A. *Accredited Investor*

As indicated above, the new Section 4(6) exemption incorporates the accredited investor concept and that term is defined in Section 2(15). The Commission is given rulemaking authority to expand this definition to include additional types of purchasers as "accredited investors" based on such factors as financial sophistication, net worth, knowledge, experience in financial matters, or assets under management.[16] In the absence of such a rule, the only investors who may purchase securities sold in reliance on that exemption are the list of institutional-type purchasers contained in the statutory definition of "acredited investor,"[17] which, unlike Rule 242, includes "business development companies" as defined in Section 2(a)(48) of the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*][18]

The definition contained in Rule 242, on the other hand, includes directors or executive officers of the issuer as well as purchasers of $100,000 or more of the issuer's securities for cash or certain cash equivalents.[19]

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[15] *Henderson v. Hayden, Stone Inc.*, 461 F. 2d 1069 (5th Cir. 1972).

[16] *Supra*, note 2.

[17] *Id.*

[18] Title I of the 1980 Act contains amendments to the Investment Company Act that are designed to exempt "business development companies" from certain specific provisions of the Act in favor of a carefully tailored pattern of regulation that takes into account the special needs of so-called "venture capital" activity, while at the same time preserving important investor protections. In order to qualify as a "business development company" under the 1980 Act, a company has to be a domestic company that is operated for the purpose of investing in the securities of certain described issuers, and that makes available significant managerial assistance to those issuers. *See* Section 101 of the 1980 Act.

The Commission is currently considering proposing rules under Section 2(15) of the 1933 Act, to include officers and directors as well as $100,000 purchasers for cash or cash equivalents in the defintion of "accredited investors" for purposes of Section 4(6) transactions. In addition, the Commission is considering the inclusion of "business development companies" in the definition of "accredited investor" contained in Rule 242. Such amendments would result in identical definitions for both type transactions and, thus, would eliminate this inconsistency between the two exemptions. The Commission believes, based on the public comments it received prior to adopting Rule 242, that the $100,000 purchaser may be appropriate in the context of Rule 242 which is available only to corporate issuers and which limits the amount of the offering to $2,000,000. However, a $100,000 purchaser may not have sufficient leverage in a $5,000,000 transaction to ask for and obtain the information needed to make an informed investment decision. In a limited partnership transaction involving immediate tax benefits, the economic significance to an investor of a $100,000 investment may be less than in a corporate offering. Therefore, the Commission invites comment on whether and to what extent the definition of accredited investor contained in Rule 242 and Seciton 2(15) for purposes of transactions in reliance on Section 4(6) should be identical.

The Commission is also considering the advisability of incorporating the accredited investor concept into Rule 146. That rule now contains a provision that persons who buy at least $150,000 of securities for cash need not be included when calculating the 35 purchasers ceiling. However, such persons must still meet the sophistication test of the rule and must be provided with an offering circular. The Commission is considering excluding accredited investors not only from the calculation of 35 purchasers but also from the sophistication and information requirements of the rule, on the assumption that one can presume that accredited investors, being sophisticated, may fend for themselves.

Interested persons are asked to comment on whether this is a desirable amendment of Rule 146 and whether the definition of accredited investor for purposes of Rule 146 should be the same as for Rule 242, especially with respect to the $100,000 amount. Comments are also invited as to whether the Commission has the authority, particularly in light of judicial interpretations, to make such changes.

2. *Qualified Issuers*

As stated earlier, the availability of Rule 242 is limited to "qualified issuers" which are defined as any domestic or Canadian corporation, which is (a) not an investment company; (b) not engaged in significant oil and gas operations; (c) not engaged in significant mining operations; and (d) not a subsidiary of an issuer which would not be qualified to use the exemption. These type of issuers represent the same issuers that are prohibited from using Form S-18. The Commission included the issuer restrictions because both Form S-18 and Rule 242 were considered to be in the nature of an experiment representing a significant departure from traditional disclosure concepts. For this reason the Commission determined to proceed cautiously with respect to the expansion of the availability of these provisions. Seciton 4(6), however, has no issuer qualification. Although the Commission recognizes that Rule 242, in its present form, is narrower than that currently provided by the statutory exemption for sales to accredited investors, the Commission also notes that, unlike Section 4(6), Rule 242 permits sales to 35 additional persons for which no qualification standards are presumed or imposed. Thus, the Commision invites comment on the advisability of eliminating some or all of the issuer qualifications of Rule 242, particularly in view of the enactment of Section 4(6). Since the same types of issuers are also restricted from registering their securities on Form S-18, the

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[19] The pertinent provisions of the definition of "accredited investor" contained in Rule 242 are as follows:

(ii) Any person who purchases $100,000 or more of securities of the issuer per issue sold pursuant to this rule for any combination of (A) cash, or (B) an obligation to pay which provides for full recourse against the purchaser of the securities and for discharge of the obligation within 60 days of the first issuance of the securities, or (C) the cancellation of any indebtedness owed by the issuer of the securities being offered pursuant to this rule; and

(iii) Any director or executive officer of the issuer of the securities being offered pursuant to this rule.

Commission also invites comment on whether such restrictions should be eliminated from Form S-18.

3. *The "Issue" Concept*

Section 4(6) specifies that the aggregate price of an issue of securities offered in reliance on the exemption shall not exceed the amount allowed under Section 3(b). However, the term "issue of securities" is not defined in the 1933 Act. Thus, it becomes important to determine whether separate transactions are part of the same issue, *i.e.*, are deemed to be "integrated."

Generally, the determination as to whether separate sales of securities are part of the same issue depends on the particular facts and circumstances. The following factors should be considered in determining whether separate sales are part of the same issue for purposes of Section 4(6):[20]

(a) whether the sales are part of a single plan of financing;

(b) whether the sales involve issuance of the same class of security;

(c) whether the sales have been made at or about the same time;

(d) whether the same type of consideration is received; and

(e) whether the sales are made for the same general purpose.[21]

These same factors are applicable to a determination of whether offers and sales should be integrated for purposes of the exemption under Section 4(2) of the 1933 Act and the Commission's Rules 146 and 242. The Commission, however, has adopted "safe harbor" provisions under Rules 146 and 242 which are designed to provide certainty by identifying certain offers and sales of securities which will be deemed not part of an issue in connection with offerings and sales made under these Rules. In determining which securities constitute a single issue for purposes of Rule 146, sales of securities occurring more than six months prior to and six months subsequent to the subject offering will not be considered part of the same issue if, during neither of the six-month periods, there were offers or sales of securities by or for the issuer of the same or a similar class as those of the subject offering. Rule 242 has a similar safe harbor provision except sales pursuant to any Section 3(b) exemption or pursuant to employee plans are permitted during the six-month "window-period."

The Commission is currently considering proposing a similar safe harbor provision for sales of securities made in reliance on Section 4(6). It is anticipated that any proposed safe harbor would permit sales pursuant to an employee plan to be made during the six-month period without resulting in a loss of the safe harbor. The Commission invites comments as to whether a safe harbor provision should be adopted for purposes of Section 4(6) and, if so, what form it should take. The Commission is interested in receiving comments on the effects of such an approach on the integration concept as a whole.

2. *Increases in Ceiling Limitations*

As originally adopted in 1933, the maximum dollar value of securities that could be exempt from registration pursuant to Section 3(b) was $100,000. Prior to the enactment of the 1980 Act, the ceiling has been raised on several occasions, most recently in May and October 1978, when it was increased from $500,000 to $1,500,00[22] and then from $1,500,000 to $2,000,000[23]. The recent increase to $5,000,000 authorized by Congress was intended to provide the Commission with increased flexibility in developing exemptions targeted to smaller issuers without the need to seek legislative amendments on a frequent basis.[24] Thus the Commission invites public discussion as to whether the ceiling should be raised for existing exemptive provisions under Section 3(b), or whether new exemptions tailored to offerings between $2,000,000 ana $5,000,000 should be developed.

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[20] In its report on S.2990, which proposed Section 4(6) as finally adopted by the House, the Senate Committee on Banking, Housing and Urban Affairs stated that ". . . existing interpretations of the term 'issue of securities' would apply in determining whether separate securities transactions should be considered as part of the same 'issue of securities.'" S. Rep. 958, 96th Cong., 2d Sess. at 44 (1980).

[21] Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

[22] Pub. L. No. 95-283, May 21, 1978.

[23] Pub. L. No. 95-425, October 6, 1978.

[24] S. Rep. 958, *supra* note 20 at 12.

A. *Rule 240*

Rule 240 has generally been applauded as representing a welcome balancing of the needs of small business to raise capital with the protection of investors. The rule has been described as being particularly useful for the small local issuer who is seeking funds from friends and relatives.[25] Commentators, however, have consistently favored an increase in the $100,000 limitation on the aggregate sales price.[26] The Commission is considering increasing the amount of securities that can be sold under this exemption, particularly since the $100,000 limitation was adopted in 1975 when the Regulation A limitation was $500,000.

The Commission notes that during the year ended September 30, 1980, 1,486 issuers who used the Rule 240 exemption filed notices on Form 240 for an aggregate amount of sales of $14,164,141. During the same period in 1979, 477 issuers filed notices on Form 240 for an aggregate amount of $9,707,205.

Rule 240 requires neither specified information nor any assurance that offerees and buyers will be able to obtain information in some other way. The Commisison is concerned about whether a significant increase in the ceiling without corresponding safeguards with respect to minimum disclosure requirements is appropriate in the public interest or the protection of investors. The Commission invites comment on whether and to what extent the ceiling limitation under Rule 240 should be increased and also asks commentators to express their views on the advisability of prescribing minimum disclosure standards in conjunction with an increase in the ceiling.

B. *REGULATION A CEILING*

The Commission is considering the advisability of increasing the Regulation A ceiling from $1,500,000 to some greater amount, possibility $3,000,000. During the 12 months ended September 30, 1980 there were 398 filings under Regulation A for an aggregate amount of $344,355,729 compared with 347 filings for an aggregate amount of $277,807,614 in the preceding year. During the 1980 period, 115 of the filings were for offerings between $1,400,000 and $1,500,000, and during the 1979 period 87 filings were for offerings in that range.[27]

If the Regulation A ceiling is increased, the Commission has considered the advisability of requiring certified financial statements for one year, at least offerings exceeding a certain dollar amount. However, if that were done, a Regulation A offering that is required to include certified financial statements may have little advantage over a registered offering on Form S-18.

Another approach being considered is to reduce the length of time to six months in which the maximum aggregate amount of securities may be sold under Regulation A. Assuming an increase to $2,000,000, such an approach would permit an issuer to sell up to $4,000,000 in a year. This approach has the advantage of coinciding with the approach taken in Rule 242 in calculating the amount that can be sold under that exemption. The Commission is concerned, however, that, because of the time and cost involved in preparing for an offering under Regulation A, an issuer may be unable or unwilling to make two offerings in a twelve-month period.

The Commission invites comments on whether and to what extent the ceiling on Regulation A should be increased; whether issuers making offerings under Regulation A over some particular level should be required to furnish one year certified financial statements; and whether it would be useful to increase the ceiling indirectly by allowing offerings up to $2,000,000 every six months.

The Commission also invites commentators to consider whether it would be appropriate, in light of the recent efforts to implement integration, to make the exemption provided by Regulation A available only to companies who are not reporting under the Securities Exchange Act of 1934. In this connection the Commission notes that 31 of the 398 Regulation A offerings during the year ended September 30,

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[25] Small Business Hearings, *supra* note 12 at 132.

[26] *Id.* at 136.

[27] Because of the increase in Regulation A filings and the probabilities of raising the current ceiling from $1,500,000, the Commission is proposing in a separate release to update the disclosure requirements adopted in 1956 to reflect current disclosure practice to enable issuers to save time and expense in complying with the Regulation.

1980 were made by reporting companies and 30 of the 347 Regulation A offerings during the same period in 1979 were by reporting companies. Further, proposed initiatives for integration will substantially reduce the registration costs for all companies which have been filing periodic reports for more than three years.

The Commission is also concerned with an appropriate increase in Rule 257 [17 CFR 230.257] under Regulation A. Rule 257 permits offerings not exceeding $100,000 to be made to seasoned issuers[28] without the use of an offering circular.[29] Although the rule is available for primary and secondary offerings of securities, it is not currently being utilized extensively. This may be due, in part, to the limited amount of securities which may be sold thereunder. The Commission requests commentators to express their views with respect to whether and, if so, to what extent an increase in the ceiling under Rule 257 is appropriate.

3. *Rule 242*

When the Commission originally adopted Rule 242 it provided that an issuer could sell up to the amount allowed under Section 3(b) during any six month period in reliance on the Rule. At that time the Section 3(b) ceiling was $2,000,000. On October 23, 1980 after the Section 3(b) ceiling had been raised to $5,000,000, the Commission adopted an amendment to Rule 242 to specify that $2,000,000 could be sold in any six month period and eliminated the prior reference to the Section 3(b) amount.[30] The amendment was intended to maintain the rule's limitations as originally adopted by the Commission pending further review of its experience under Rule 242. The Commission stated at that time that it intended to reconsider the limitation on the amount of securities that can be sold under Rule 242 along with other ceiling limitations prescribed by other Section 3(b) exemptions in the near future.[31] The Commission is considering the desirability of increasing the dollar amount of securities that may be sold under the Rule 242 exemption. The Commission is also considering the desirability of conforming Rule 242 and Regulation A with respect to the time period during which the limit may be sold, so that both rules would be based on either a six month period or a twelve month period. If this were done, Rule 242 might be amended to provide that the amount permitted under Section 3(b) could be sold in a twelve month period, thus increasing in effect the amount that could be sold under Rule 242 from $4,000,000 in a 12 month period to $5,000,000 in a 12 month period.

A recent study of Rule 242 prepared by the Directorate of Economic and Policy Analysis and released by the Commission[32] indicates that during the first six months the exemption was available 64 issuers filed Form 242 notices of intended sales aggregating $38,058,704. The intended sales reported by issuers ranged from $17,500 to $2,000,000 with an average intended sales amount of $613,850. Thirteen of the issuers, approximately 20%, reported intended sales of $1,000,000 or more and, of these, four issuers reported intended sales of the maximum $2,000,000. This study also indicated that issuers using Rule 242 are small when measured by their financial characteristics and number of employees. Over half had no more than $1,000,000 in annual revenues and total assets for their latest fiscal year and reported either zero or negative net income. Over half of the issuers had no more than 20 full-time and 5 part time employees. However, these issuers are about the same size or slightly larger than issuers of a sample of comparable small public offerings, as measured by revenues, assets, income, shareholders' equity, and number of employees.

Commentators are invited to comment on the advisability of increasing the Rule 242 ceiling, in light of the foregoing study, and, if an increase is advisable, the most desirable method of effecting the increase. Commentators are also requested to focus on the relationship between an increase in Rule 242 and those of other Section 3(b) ceiling limitations, as well as Section 4(6).

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[28] This includes issuers which have been organized or incorporated for more than one year and have a net income from operations for one of the last two fiscal years.

[29] Although an offering circular does not have to be filed, Rule 257(a) does require that there be filed as an exhibit to the notification a statement setting forth the information (other than financial statements) required by Schedule I of Form 1-A.

[30] Securities Act Release No. 6250 (October 23, 1980) [45 FR 71775].

[31] *Id.*

[32] Rule 242: A Monitoring Report on the First Six Months of Its. Use.

4. *Form S-18*

Last year the Commission simplified registration and reporting procedures for small businesses through the adoption of Form S-18.

This form is available to certain domestic and Canadian corporate issuers, who are not subject to the Commission's continuous reporting requirements, for the registration of securities to be sold for cash not exceeding an aggregate offering price of $5 million.

The present inquiry with respect to Form S-18 relates to whether the $5,000,000 ceiling limitation should be raised if the Regulation A ceiling is significantly increased. The Commission notes that as of October 31, 1980, 23 of the 173 filings made on Form S-18 since the adoption of the Form were for offerings between $4,000,000 and $5,000,000. It is also noted that during the 12 month period ended July 31, 1980, 64 filings were made on Form S-1 by companies who were not reporting companies for offerings between $5,000,000 and $10,000,000. If the ceiling on Form S-18 had been higher and if that Form had been available to limited partnerships and/or companies with significant mining and oil and gas operations, some or all of those issuers who used Form S-1 might have used Form S-18.

The Commission invites comment on whether an increase in the Form S-18 ceiling would be advisable if an increase is adopted in the Regulation A ceiling. Comments are also invited as to whether an increase in the amount of secondary offerings that may be permitted by the Form, currently set at $1,500,000 should be effected.

All interested persons are invited to submit their written views or comments on the foregoing questions and on any other areas which they believe might be relevant to the consideration of the exemptions decribed herein. These comments should be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C., 20549 on or before February 20, 1981. Such communications should refer to File No. S7-867, and will be available for public inspection.

By the Commission.

George A. Fitzsimmons
Secretary

Comparison Item	*Rule 242*	*Rule 240*	*Rule 146*	*Section 4(6)*
Aggregate Sales Price	$2,000,000/6 mos. (including all §3(b) sales)	$100,000/12 mos. (including all sales of exempt securities)	Unlimited	$5,000,000 per offering
Commission Prohibition	No	Yes	No	No
Manner of Offering	No general solicitation or general advertising	No general solicitation or general advertising	No general solicitation or general advertising	No general solicitation or general advertising
Excluded Issuers	Non-U.S. or Canadian; limited partnerships; corporations with significant oil and gas or mining operations; investment companies	None	None	None
Nature of Offerees	Not regulated	Not regulated	Must be capable of evaulation the merits and risks of prospective investment and/or be wealthy	Accredited investors
Information Requirement	(1) Non accredited purchasers: (a) reporting companies—most recent annual report definitive, proxy statement and recent periodic reports. (b) non-reporting companies-info required by Part I of Form S-18 to the extent material (2) Accredited purchasers: No specific requirement unless both accredited and non-accredited purchasers involved and then all purchasers required to be furnished same info	None	Must furnish (unless offeree has access via economic bargaining power): (1) $1,500,000 offerings—info may be limited to Schedule I (Reg A) info; (2) Other offerings- (a) reporting companies-recent Form S-1 or Form 10, definitive proxy statement and recent periodic reports (b) Non-reporting companies-info that would required to be included in registration statement on form which issuer would entitled to use	No specific requirements
Opportunity for Questions	Yes	No	Yes	No specific requirement
Resales Restricted	Yes	Yes	Yes	Yes

Comparison Item	*Rule 242*	*Rule 240*	*Rule 146*	*Section 4(6)*
Report of Sales	Yes, condition of Rule	Yes, condition of Rule except for first offerings under Rule	Yes, condition of Rule	Yes, condition of exemption
Nature of Purchasers	Not regulated	Not regulated	Must be sophisticated and/or wealthy with offeree representative	Accredited investors
Number of Purchasers	Reasonable basis to believe and believe, after reasonable inquiry, 35 or fewer, not counting accredited purchasers and purchasers of $100,000 of securities	Available only if 100 or fewer total beneficial owners of securities	Reasonable basis to believe and believe, after reasonable inquiry, 35 or fewer, not counting purchasers of $150,000 of securities	No limit on number of accrediated investors-no other persons
Applicability of Sec. 10b and Rule 10b-5	Applies	Applies	Applies	Applies

SECURITIES ACT OF 1933
Release No. 6275/December 23, 1980

THE SMALL OFFERING EXEMPTION FROM REGISTRATION REQUIREMENTS

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to the rules, forms, and disclosure requirements under Regulation A. The regulation, which may be used by a variety of issuers to raise up to $1.5 million worth of securities during any twelve-month period, has not been substantially revised since 1956. The proposals represent a comprehensive updating and revision of the disclosure requrements. Certain minor rule and form amendments are also being proposed. The proposals are being published at this time in view of the recent increase in the use of the Regulation and the Commission's inquiry in a companion release concerning an increase in the offering ceiling limit of Regulation A.

DATE: Comments must be received on or before March 23, 1981.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-868 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Paul A. Belvin, or Daniel Abdun-Nabi, Office of Small Business Policy, Division of Corporation Finance, (202) 272-2644.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for public comment proposed amendments to Regulation A [17 CFR 230.251 et seq.] under the Securities Act of 1933 (the 1933 Act")] [15 U.S.C. 77a et seq., as amended]. Regulation A provides an exemption from the registration provisions of the 1933 Act for sales of securities up to $1.5 million during a 12 month period.[1] Form 1-A [17 CFR 239.90], which contains the Regulation A disclosure provisions, is the subject of a complete revision.

Introduction

During April and May 1978, the commission held a series of small business hearings in several cities across the nation.[2] The primary issue addressed at the hearings concerned the impact the federal securities laws have on small businesses trying to raise capital. In this regard, the continued viability of Regulation A as an alternative to full registration received attention. Commentators at the hearings consistently indicated the need to revise and update the requirements of Regulation A to make it a more practical means for small businesses to raise capital.

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[1] Regulation A is promulgated pursuant to Section 3(b) of the Securities Act. Section 3(b) authorizes the Commission to adopt rules and regulations to exempt $5 million of securities per issue from registration, subject to appropriate conditions, if it finds that registration is not necessary in the public interest or for the protection of investors by reason of the small amount involved or the limited character of the offering. This "ceiling" amount was recently increased from $2 million to $5 million pursuant to the Small Business Investment Incentive Act of 1980, Publ. L. No. 96-477, (October 21, 1980).

[2] In Securities Act Release No. 5914 (March 6, 1978) [43 FR 10876], the Commission announced its intention to hold a series of small business hearings. The full text of the comments offered can be found in Commission File No. S7-734.

As a result of the hearings, numerous revisions to the Commission's rules and regulations have already been made. With respect to Regulation A, the "ceiling" amount of securities that may by offered has been increased[3] and a rule adopted allowing issuers to use a preliminary offering circular in Regulation A offerings.[4] These revisions are significant in that they have expanded the usefulness of Regulation A.[5] The Regulation A rules and schedules themselves, however, are in need of a thorough review and update; they have not been substantially revised since 1956[6]. Consequently, the Regulation A disclosure schedule requirements have essentially become outdated and do not reflect the type of disclosure actually being included in Regulation A offering circulars.

Commentators at the Commission's Small Business Hearings expressed the view that the absence of updating revisions to the Regulation A disclosure requirements could impose a burden on smaller issuers. These issuers might be required to spend a longer period, and consequently a greater expense, in the pre-offering comment and amendment period since issuers and inexperienced counsel would believe that Schedule I accurately reflected the Regulation A disclosure requirements and prepare their initial filing accordingly. In response to these comments the proposals published today for public comment represent a comprehensive revision and reformattting of the Regulation A disclosure provisions. Also included in the proposed amendments are certain minor changes to the Regulation A rules. Additional substantive amendments to these rules will be proposed in the near future. In this regard the Commission today published a companion release[7] which, among other things, seeks public comment as to whether the "ceiling amount" in Regulation A should be raised and, if so, whether any amendments to disclosure requirements, such as the inclusion of certified financial statements, should be made for offerings in excess of the current $1.5 million ceilings. The release is in response to the recently enacted Small Business Investment Incentive Act of 1980 which, among other things, raised the ceiling applicable to Section 3(b) of the 1933 Act, under which Regulation A is promulgated, from $2 million to $5 million.[8]

As discussed fully below, the instant proposals are designed to codify disclosure standards which are currently being applied to Regulation A offerings and to provide specific disclosure requirements for different types of issuers and different types of offerings. The Commission does not expect that the amendements proposed today will in any way increase the burdens on issuers utilizing the Regulation. Rather, the proposals should have a beneficial effect on those issuers through a reduction in the time spent in the preparation and review of a Regulation A filing. In addition, the Commission anticipates that the proposed amendments should significantly assist the administration of uniform disclosure policies with respect to Regulation A offerings as processed by the Commission's nine Regional Offices.

DISCUSSION

Regulation A represents a method by which a variety of different types of issuers may issue securities publicly. The offerings may involve a simple offering of debt or equity securities to the public to raise capital or they may involve transactions such as a merger of companies or an offering pursuant to an employee stock option or benefit plan. Generally, the Form 1-A notification, Schedule 1 of Form 1-A and a group of relatively brief rules currently delineate the disclosure requirements applicable to all of these types of offerings. If the same types of offerings were registered,they would be subject to the detailed disclosure requirements established by the guides for the preparation of registration statements (17 CFR 231, Release No. 33-4936), a series of rules under Regulation C (17 CFR 230.400-230.494), and the various registration forms which are applicable to the different types of offerings (17 CFR 239.4-239.61).

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[3] The ceiling applicable to Regulation A was increased, in September 1978, from $500,000 to $1,500,000. Securities Act Release No. 5877 (September 18, 1978) [43 FR 55254].

[4] Securities Act Release No. 6075 (June 1, 1979) [44 FR 33362].

[5] During fiscal 1978, 242 notifications on Form 1-A were filed representing $87 million worth of securities while 347 notifications for $278 million were filed for fiscal 1979. During fiscal 1980, 398 notifications were filed for $351 million.

[6] Securities Act Release No. 3613 (February 14, 1956) [21 FR 1147].

[7] Securities Act Release No. 6274 (December 23, 1980) (Comment period expires on February 20, 1981).

[8] Pub. L. No. 96-477 (October 21, 1980).

Form 1-A and Scheulde I were not designed to reflect the variety of offerings that have, over the years, been made pursuant to Regulation A. As a result, offering circulars filed for these offerings, to a certain extent rely, by analogy, on the standards applied to registered offerings. The staff of the Office of Small Business Policy, Division of Corporation Finance, have reviewed a large number of offering circulars over a recent period. This review indicated that the disclosure in these circulars is often similar, in certain respects, to the quantity and quality of disclsoure being made in registered offerings. For example, circulars relating to employee plans included disclosure that would be required by Form S-8 (17 CFR 239.16b); circulars for mergers include disclosure that would normally appear in a Form S-14 (17 CFR 239.23) registration; offerings relating to bank holding companies included much of the information required by Guide No. 61 to Guides to Preparation of Registration Statements.[9] The bulk of disclosure included in these circulars was not limited to the disclosure requirements set out in Schedule I of Regulation A and did not result necessarily from comments by the staff.

A review of more commonplace corporate equity offerings by Regulation A issuers also revealed that many current disclosure practices, which are technically applicable to registration statements only, were and are followed with respect to these offerings when made pursuant to Regulation A. For example, most offering circulars include a "risk factors" section in the forepart of the circular. Such disclosure is not technically required by the existing Regulation A disclosure requirements but is required in registration statements pursuant to Guide No. 6 to Guides to Preparation of Registration Statements. The inclusion of certain registered offering type disclosures may be explained in part by the fact that issuers concerned with Securities Acts liability for failure to state a material fact pattern have looked to the various forms for registration for guidance in the absence of adequate disclosure requirements under Regulation A.

The initial consideration in revising the Regulation was to develop disclosure requirements for a single regulation that would be flexible enough to facilitate a wide variety of offerings. In addition, primary consideration was given to retaining a regulatory structure that would remain less burdensome for small issuers than the registration format. The approach proposed herein represents a flexible method of facilitating a variety of issuers and offerings and, at the same time, minimizing to the extent possible the burdens that would be placed on issuers utilizing the exemption. The proposed items applicable to registration statements. In this respect, any future additions to these items for the more specialized offerings, such as employee plans and mergers, will be drafted with a view towards minimizing the disclosure burdens on small issuers.

The existing structure of Regulation A calls for the filing of a "notification" on Form 1-A, and exhibits to that form which include, among other things, and offering circular prepared in accordance with Schedule I of Form 1-A. As proposed today, a single document, designated the "offering statement," would replace the present notification and offering circular. The offering statement would consist of three parts and would be the basic form to be used by every issuer for every offering made under the Regulation.

Part I of the offering statement is similar to the present notification. Every issuer utilizing the Regulation will be required to disclose the information called for in Part I—Notification. The basic purpose of the current notification is to present certain information which is neccessary to determine the availability of the exemption. For example, the existence of any disqualifications under Rule 252 would be disclosed in the notification. Part I—Notification of the Offering Statement serves the same purpose. As discussed below, the items have been revised and consolidated. Similar to the existing notification, Part I—Notification will be filed and public available but will not be circulated by the issuer to investors.

Part II of the offering statement consists of the offering circular to be distributed to investors. Part II—Offering Circular was specifically designed to facilitate the different types of offerings which may be made under the exemption. The proposed structure contemplates the establishment of a "pool" of disclosure items. The disclosure required by this pool will range from basic items such as description of business and management remuneration to more specialized items such as the description of an employee plan or a discussion of the investment policies of a real estate investment trust. The general instructions to Part II of the offering statement indicate the items to which a particular issuer would be required to respond. Accordingly, a real estate investment trust would not have to respond to items germane to offerings by mining companies. However, both real estate investment trusts and mining companies would have to disclose information pursuant to the management remuneration item. This concept was first recommended by the Advisory Committee on Corporate disclosure with respect to registered offerings[10] and has been adopted in part by the Commission in Regulation S-K.[11] The Commission believes that the concept is especially appropriate in the context of Regulation A since the disclosure requirements must relate to a wide variety of issuers and offerings.

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[9] 17 CFR 231, Release No. 33-4936.

The "pool" of items proposed today represents the basic disclosure items that will be applicable to most Regulation A issuers. In the event the proposed amendments are adopted, additional items tailored to the various issuers that use the Regulation, e.g. issuers engaged in oil and gas or mining operations, will be proposed.

Part III of the offering statement relates solely to exhibits. The exhibits would be treated in the same manner as those currently required by Form 1-A. That is, they would be filed with the Commission, be publicly available, but would not be circulated to investors. Most of the exhibits currently required by Form 1-A are required by Part III—Exhibits with the notable exception of the offering circular which would become Part II of the Offering Statement. Certain exhibits have been added to the list of those currently required by Form 1-A. These represent documents which are often called for by the staff as supplemental information. Also, Part III—Exhibits would require the sequential numbering of the Offering Statement.[12] The manually signed copy of the offering statement would be required to be sequentially numbered beginning with the cover page and for each copy to utilize an exhibit index which relies on this numbering system.

In considering the proposed revision of Regulation A, it is important to recognize that, as a practical ,atter, it would not represent an expansion of the disclosure that is currently being made in Regulation A offering circulars. Therefore, while the proposed revisions would result in more detailed disclosure requirements, in fact, they would constitute a codification of current disclosure policies and practices followed by the staff and experienced issuers with respect to Regulation A offerings. More comprehensive and explanatory disclosure requirements should aid issuers in preparing the necessary documents and should therefore save issuers time and expense in complying the Regulation A. Adoption of a comprehensive system of disclosure standards is particularly important at this time in veiw of the possible increases in the ceiling amount that may be offered pursuant to the Regulation as discussed above.

Although the Commission anticipates that adoption of the proposals published today would benefit smaller issuers, inquiry also is made as to whether the codification represented by today's proposals reflects an appropriate level of disclosure for Regulation A offerings. The commission specifically requests comment on whether any or all of the disclosure requirements of Regulation A should call for different levels or types of disclosure than the instant proposals.

Amendments to Rules and Forms

Numerous amendments to the Regulation A rules are proposed simply to make them consistent with the new terminology utilized in the proposed disclosure requirements. The rules currently refer to a "notification" on Form 1-A and an offering circular including the information required by Schedule I. The revised structure proposes a uniform "offering statement" which is made up of three parts. The majority of the rule amendments are therefore merely technical in nature. Certain substantive amendments which are proposed are discussed below.

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[10] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 59-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) at 456.

[11] 17 CFR 229.20 et seq.

[12] A similar proposal was recently adopted with respect to registration statements. Securities Act Release No. 6230, (August 27, 1980) [45 FR 58822].

SYNOPSIS

I. *Offering Statement*

A. General

A cover page for the offering statement will be placed on the front of the Part I—Notification. This cover page is designed to set forth basic information such as the issuer's name and address. Following the cover page is a series of self-explanatory instructions as to the use and preparation of the offering statement.

B. Part I—Notification

The first six items of this part are generally a consolidated version of the present notification. The existing requirements have been abbreviated in several instances. For example, Item 2(b) of Schedule I requires the issuer's affiliates to be named and all positions held with the issuer to be described. The revised version of these items only requires disclosure of the names of these individuals. The existing requirements have also been consolidated. For example 2, 3 and 4 of the existing notification have been consolidated to Item 1 of Part I—Notification. Also, old Items 5, 6 and 7 have been consolidated into new Item 2.

Items 7 and 8 of Part I—Notification are new additions. Item 7 requires disclosures of any marketing arrangements known to the issuer that may have a deleterious effect on the aftermarket in the issuer's securities. Item 8 concerns potential conflicts of interest with respect to experts that prepare or certify portions of the offering statement.

C. *Part II—Offering Circular*

1. Text

The textual disclosure requirements of Part II—Offering Circular are essentially self-explanatory. The revised offering circular disclosure requirements were built upon the major concepts embodied in Schedule I; however, the proposed disclosures emphasize the importance of information on the business of the issuer, the quality of its management, potential conflicts of interest, and the use of proceeds. This emphasis reflects the Commision's belief that these issues are of particular importance in Regulation A offerings.

The revised items are longer than those appearing in existing Schedule I for two reasons. First, the revised items reflect disclosure standards which have evolved since the adoption of the existing Schedule I in 1956 and which, for the most part, are being followed by issuers and their counsel in drafting their circulars. Second, existing Schedule I does not provide any explanatory instructions to issuers. The language of the Schedule I requirements is so general that necessary refining of the scope of any item is, therefore, accomplished through the comment process. The result is more extensive comments by the staff and more expense to the issuer through time and money spent in revising the offering circular. A significant portion of the revised items is dedicated to instructions which are designed to aid issuers in determining the intent and scope of the disclosure requirement prior to filing. These instructions should aid issuers in the preparation of the circular and therefore result in a more complete document at the time of filing with the Commission.

As noted above, the proposals are lengthier than the requirements of existing Schedule I. However, the proposed amendments generally call for significantly less extensive disclosure than Form S-18. For example, the proposals, similar to Schedule I, do not contain an express disclosure requirement regarding pending legal proceedings. Also, proposed Item 10. Security Ownership of Management and Certain Secuirty Holders calls for less disclosure than its corresponding item in Form S-18 by requiring disclosure relating to record ownership and voting control only. The Commission specifically solicits comments as to whether the narrative disclosure requirements of Regulation A and Form S-18 should be more uniform.[13]

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[13] The Commission has simultaneously proposed for comment substantial revisions to Regulation S-K [17 CFR 299.20 et seq.] and the Guides for the Preparation and Filing of Registration Statements. Securities Act Release No. 6276 (December 23, 1980) (Comment period expires March 6, 1981). While it is recognized that Regulation A calls for less extensive disclosure than registered offerings, the Commission solicits comments as to whether Regulation A should require disclosure consistent with any of the proposed substantive disclosure provisions.

2. Financial Statements

The financial statement requirements have remained essentially unchanged. The standards for when certified financial statements are required and when uncertified financials will be allowed have not been altered. Requirements have been added which will codify the standards applied in cases where there have been past successions to other businesses or will be future successions to other businesses. In addition, a detailed definition of the term "significant subsidiary" has been included as a guide to issuers.

With regard to certified financial statements, an instruction has been added requiring that any report of an independent account regarding than any financial statements shall comply with Article 2 of Regulation S-X. Article 2 sets forth technical requirements regarding the content of auditors' reports which are included: (1) represent that the audit was performed in accordance with Generally Accepted Auditing Standards, (2) clearly state an opinion on the financials and related accounting principles, and (3) identify and explain matters to which exception is taken. Article 2 also includes standards regarding auditors independence.

D. Part III—Exhibits

Although the exhibit requirements delineated in Form 1-A have been reworded, the substantive requirements have remained substantially unchanged. One major modification in this regard concerns the reformatting of the disclosure requirements. The offering circular will no longer be filed as an exhibit to the notification. Pursuant to the proposal, the offering circular will consitute and entirely separate part of the offering statement.

Two procedural concepts have been added and are set forth in Item 1 of Part III. These provisions allow for incorporation by reference of exhibits that have been previously filed. The second indicates that if any material changes occur with respect to exhibits filed an amended version reflecting such changes would be required. The former is meant to avoid duplication and will benefit those Regulation A issuers that are subject to the reporting provisions under the Securities Exchange Act of 1934.[14] The latter was meant to assure that material changes in required documents are filed with the Commission.

Certain exhibit requirements have been added as has the new sequential numbering system and exhibit index requirements. The latter two additions are discussed fully below under "Rule Amendments." Six new requirements have been included in the proposals. The first concerns the issuer's charter and/or by-laws or similar instrument. The second concerns voting trust agreements. Certain material contracts will also be required under the third new section. In most instances, each of the above three types of documents are filed pursuant to staff comments since such documents are essential to an adequate review of the disclosure made in the offering circular. Additionally, filing these documents should not represent a significant burden to issuers. The fourth requirement concerns the filing of material foreign patents which is necessitated since Regulation A may be used by certain Canadian issuers. Unlike domestic patents, the staff and the public do not have any assured access to Canadian patents. Based on past experience the Commission does not anticipate that this additional requirement will place a significant burden on issuers. Fifth, certain reorganization and acquisition agreements will be filed under the revised item. Since Regulation A may be used in the merger/acquisition context, such information is important. Lastly, two provisions concerning escrow agreements have been added. Any escrow agreement utilized to comply with Rule 253(c) will be filed as an exhibit. In this connection, the proposals include a new optional Form 7-A which is described below. In the event the offering is minimum-maximum offering, the escrow agreement that will be used for funds received, up to the minimum, will also be filed.

A new subsection has been added which encompasses the consent requirements set forth in existing Form 1-A concerning experts, underwriters and non-residents. This subsection includes the consent requirements already included in Form 1-A. Specifically the consent of the underwriter connected with the offering, experts who prepare parts of the offering statement and non-residents will continue to be required. A new requirement concerning experts has been included. If an expert's report is quoted or summarized (as opposed to experts who actually prepare or certify parts of the offering statement), his consent will now be required. Form requirements, such as a manual signature and dating requirement, have also been added. Finally, a provision has been made to allow issuers to apply to the Commission for a waiver of any consent requirement.

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[14] See Sections 12, 13 and 15(d) of the Securities Exchange Act of 1934. 15 U.S.C. §78 1, m, n(d) (1976).

II. Amendments to Rules

Amendments to each Regulation A rule are proposed herein.[15] The majority of these amendments are technical in nature since terminology in the existing rules referring to a "notification" on Form 1-A and an "offering circular" which includes required by Schedule I needed to be revised to reflect the new "offering statement" terminology.

Four substantive revisions are also proposed. First, Rule 259 has been revised to require an affirmative statement in every circular to the effect that the Commission has not passed upon the adequacy or accuracy of the disclosure presented therein. In addition, this undertaking notes that the Commission has not passed upon the availability of the Section 3(b) exemption from registration as it relates to the particular issuer. Existing Rule 259 prohibits statements which imply that the Commission has passed upon the adequacy or accuracy of disclosure or the availability of the exemption. As a matter of practice, the proposed undertaking was inserted in virtually every circular under the existing rule. Therefore, the proposal merely represents a codification of current practice.

Second, Rule 255 has been amended to include a sequential numbering system. This system would require the manually signed version of offering statement to be numbered sequentially from the first page of the statement through the last page of the last exhibits. This numbering may be done in any legible form, including handwriting. Rule 255 as amended would call for a new "index" which is to be included at the beginning of Part III—Exhibits. The cover page of the offering statement would include an indication of the total number of pages which make up the statement as well as an indication of where the exhibit index is located. Since this system may be presented in handwritten form, it is not expected that it would represent a significant burden to issuers. On the other hand, the benefit to the staff and public will be significant since locating specific pages of the statement will be much easier. This is especially true because the Commission's files are now kept on microfiche system.

Third, a basic definition of the term "parent" has been inserted in Rule 251. This addition was necessary since new Item 10(e) of Part II—Offering Circular refers to "parents" of the issuer.

Fourth, the printing and legibility requirements previously included in Rule 256(d) with respect to the offering circular have been deleted and a new general instruction concerning legibility has been included in the offering statement. Previously, Rule 256(d) set forth specific requirements as to print size to be allowed in the offering circular. The revised General Instruction sets out legibility requirements but does not specify print size. Accordingly, General Instruction B(d) provides that the Offering Statement must be printed, mimeographed, lithographed, typewritten or prepared by a similar process which will result in clearly legible copies.

III. New Form 7-A

Issuers that are subject to Rule 253(c) are required to file an escrow agreement with the Commission as an exhibit to the notification. In the past the staff of the Commission's regional offices distributed a form of escrow to issuers which met the requirements of Rule 253(c). Rather than continuing this distribution by the staff, it is proposed that the form of escrow be adopted as new optional Form 7-A under Regulation A. Form 7-A will not be a mandatory form. Issuers will have the option of utilizing any other type of escrow agreement as long as it meets the requirements of Rule 253(c).

* * * * *

TEXT OF PROPOSALS

The text of the proposls is set forth below.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By amending Regulation A, §230.251 - §230.264, is proposed to be revised as follows: §230.251 Definitions of Terms Used in This Regulation

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[15] No amendments to Rule 252 have been proposed inasmuch as substantial revisions to that rule were proposed in the recent past. *See* Securities Act Release No. 6214 (June 19, 1980) [45 FR 42642].

Affiliate

Parent. A "parent of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

* * * * *

§230.253 Special requirements for certain offerings

* * * * *

(c) * * *

(1) All securities issued prior to the filing of the offering statement, a proposal to be issued, for a consideration consisting in whole or in part of assets or services and held by the person to whom issued; and

* * * * *

§230.254 Amount of securities exempted.

* * * * *

(b) The aggregate offering price of securities which have a determinable market value shall be computed upon the basis of such market value as determined from transactions or quotations on a specified date within 15 days prior to the date of filing the offering statement or the offering price to the public, whichever is higher; *Provided,* That the aggregate gross proceeds actually received from the public for the securities offered hereunder shall not exceed the maximum aggregate offering price permitted in the particular case by paragraph (a) of this section.

* * * * *

(d) * * *

(1) Unsold securities the offering of which has been withdrawn with the consent of the Commission by amending the pertinent offering statement to reduce the amount stated therein as proposed to be offered;

* * * * *

§230.255 Filing of offering statement.

(a) At least 10 days (Saturdays, Sundays and holidays excluded) prior to the date on which the initial offering or sale of any securities is to be made under this regulation, there shall be filed with the Regional Office of the Commission specified below five copies of the offering statement required by this Regulation which shall consist of Part I—Notification, Part II—Offering Circular, and Part III—Exhibits. The Commission may, however, in its discretion, authorize the commencement of the offering prior to the expiration of such 10-day period upon a written request for such authorization.

(b) The offering statement shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the offering statement is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the offering statement, except where an officer of the issuer signs on behalf of the issuer. At the time of filing an offering statement, the applicant shall pay to the Commission at the Regional Office where the offering statement is filed a fee of $100.00, no part of which shall be refunded.

(c) The offering statement shall be filed with the Regional Office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States. The offering statement of any issuer having or proposing to have its principal business operations in Canada shall be filed with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted, unless the offering is to be made through a principal underwriter located in the United States, in which case the offering statement shall be filed with the Regional Office for the region in which such underwriter has its principal office.

(d) An amendment to any part of the offering statement will necessitate the filing of an amended offering statement which shal be signed in the same manner as the original offering statement. Five copies of such amendment shall be filed with the same Regional Office as the original offering statement at least 10 days prior to any offering or sale of the securities subsequent to the filing of such amendment, or such shorter period as the Commission, in its discretion, may authorize upon a written request for such authorization.

(e) An offering statement or any other document filed as a part thereof may be withdrawn upon application unless the offering statement is subject to an order under §230.261 at the time the application is filed or becomes subject to such an order within 15 days (Saturdays, Sundays and holidays excluded) thereafter; *Provided* That an offering statement may not be withdrawn after any of the securities proposed to the offered thereunder have been sold. Any such application shall be signed in the same manner and filed with the same Regional Office as the offering statement.

(f) The manually signed original (or in the case of duplicate originals, one duplicate original) of all offering statements, reports, or other documents filed shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the cover page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of papes contained in a numbered original shall be set forth on the first page of the document.

(g) Each offering statement shall contain an exhibit index, which should immediately precede the exhibits filed with such offering statement. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (f) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed offering statement shall list the page in the filing where the exhibit index is located.

§230.256 Filing and use of the offering circular

(a) Except as provided in paragraph (c) of this section and in §230.257—

(1) No written offer of securities of any issuer shall be made under this regulation unless an offering circular containing the information specified in Part II of the offering statement is concurrently given or has previously been given to the person to whom the offer is made, or has been sent to such person under such circumstances that it would normally have been received by him at or prior to the time of such written offer; and

* * * * *

(b) In the case of transactions effected on a securities exchange, delivery of the offering circular (offering statement—Part II) shall be deemed to have been made if prior to such transactions a reasonable number of copies of the offering circular have been furnished to the exchange for delivery to any person or persons requesting copies thereof.

(c) Any written advertisement or other written communication, or any radio or television broadcast, which states from whom an offering circular containing the information specified in Part II of the offering statement may be obtained and in addition contains no more than the following information may be published, distributed or broadcast at or after the commencement of the public offering to any person prior to sending or giving such person a copy of such circular:

* * * * *

(d) If the offering is not complete within nine months from the date of the offering circular (offering statement—Part II) a revised offering circular shall be prepared, filed and used in accordance with these rules as for an originial offering circular, except that in the case of offerings under stock purchase, savings, stock option or other similar plans for the benefit of employees, if the offering is not completed within 12 months from the date of the offering circular, a revised offering circular shall be prepared, filed and used in accordance with these rules as for an original offering circular. In no event shall an offering circular be used which is false or misleading in light of the circumstances then existing.

(e) If the original offering circular (offering statement—Part II) is revised or amended, such revised or amended circular shall be filed as an amendment to the offering statement, as provided by §230.255(d), with the appropriate Regional Office of the Commission at least 10 days prior to its use, or such shorter period as the Commission may, in its discretion, authorize upon a written request for such authorization.

(f) Sales by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction) of securities of an issuer not subject, immediatedly prior to the time of filing an offering statement, to the provisions of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, offered pursuant to this regulation and taking place prior to the expiration of ninety days after the first date upon which the securities were bona fide offered to the public, shall not be exempt pursuant to this regulation unless:

(1) the dealer furnishes a copy of the then current offering circular (offering statement—Part II) to the purchaser prior to or with the purchaser's receipt of the confirmation of the sale; or (2) the offering circular has previously been mailed or delivered to such purchaser. Failure by a dealer to comply with the provision of this subparagraph shall not otherwise affect the availability of the exemption for any other person, including the aggregate amount of securities exempted pursuant to Rule 254.

(g) The issuer or, if there is an underwriter, the underwriter shall provide reasonable quantities of copies of the offering circular (offering statement—Part II) to any dealer on request prior to the expiration of ninety days after the first date upon which securities of such issuer were bona fide offered to the public pursuant to this regulation.

(h) An offering circular filed pursuant to paragraph (e) of this section may be distributed prior to the expiration of the 10-day waiting period for offerings provided for in §230.255 (a) and (d) and paragraph (e) of this section and such distribution may be accompanied or followed by oral offers related thereto, provided the conditions in paragraphs (1) through (4) are met. For the purposes of this section, any offering circular distributed prior to the expiration of the ten day waiting period is called a Preliminary Offering Circular. Such Preliminary Offering Circular may be used to meet the requirements of paragraph (a)(2) of §230.256: *Provided,* That if a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a Preliminary Offering Circular or an offering circular of the type referred to in paragraph (4) of this section, shall be furnished to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(1) Such Preliminary Offering Circular contains substantially the information required by this section to be included in an offering circular, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. For issuers not subject to the reporting provisions under section 13(a) or 15(d) of the Securities Exchange Act of 1934, the disclosure on the outside front cover page of the Preliminary Offering Circular should include a bona fide estimate of the range of the maximum offering price and maximum number or shares or other units of securities to be offered or should include a bona fide estimate of the principal amount of debt securities to be offered.

(2) The outside front cover page of the Preliminary Offering Circular shall bear the caption "Preliminary Offering Circular," the date of its issuance, and the following statement which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldface type at least as large as that used generally in the body of such offering circular;

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be acepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered. This Preliminary Offerig Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

(3) The Preliminary Offering Circular relates to a proposed public offering of securities which is to be sold by or through one or more underwriters who are broker-dealers registered under section 15 of the Securities Exchange Act of 1934, each of whom has furnished a signed Consent and Certification in the form perscribed as a condition to the use of such offering circular;

(4) An offering circular which contains all of the

information specified in Part II of the offering statement and which is not designated as a Preliminary Offering Circular is furnished with or prior to delivery of the confirmation of sale to any person who has been furnished with a Preliminary Offering Circular pursuant to this paragraph.

§230.257 Offerings not in excess of $100,000.

Except as to issues specified in paragraphs (a) of §230.253 and issues of assessable stock, the offering circular (offering statement—Part II) need not be filed or used in connection with an offering of securities under this regulation if the aggregate offering price of all securities of the issuer, its predecessors and affiliates offered or sold without the use of such an offering circular does not exceed $100,000, computed in accordance with §230.254, provided the following conditions are met:

(a) In addition to filing Part I—Notification and Part III—Exhibits, there shall be filed as an exhibit five copies of a statement setting forth the information (other than financial statements) required by Part II—Offering Circular of the offering statement.

* * * * *

§230.258 Sales material to be filed.

Four copies of each of the following communications prepared or authorized by the issuer or anyone associated with the issuer, and of its affiliates or any principal underwriter for use in connection with the offering of any securities under §§230.251 to 230.265 shall be filed, with the office of the Commission with which the offering statement is filed, at least five days (exclusive of Saturdays, Sundays and holidays) prior to any use thereof, or such shorter period as the Commission, in its discretion, may authorize:

* * * * *

(c) every letter, circular or other written communication proposed to be sent, given or otherwise communicated to more than ten persons, except an offering circular (offering statement—Part II) filed pursuant to §230.256(e).

§230.259 Statement requried in all offering circulars.

There shall be set forth on the cover page of every offering circular the following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION.

§230.260 Reports of sales hereunder.

Within 30 days after the end of each six-month period following the date of the original offering circular (offering statement—Part II) required by §230.256, or of the statement required by §230.257, the issuer or other person for whose account the securities are offered shall file with the Regional Office of the Commission with which the offering statement was filed four copies of a report on Form 2-A containing the information called for by that form. A final report shall be made upon completion or termination of the offering andmay be made prior to the end of the six-month period in which the last sale is made.

§230.261 Suspension of exemption.

(a) The Commission may, at any time after the filing of an offering statement, enter an order temporarily suspending the exemption, if it has reason to believe that—

* * * * *

(2) The offering statement or any other sales literature contains any unture statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

* * * * *

(4) Any event has occurred after the filing of the

offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

* * * * *

(b) Upon the entry of an order under paragraph (a) of this section the Commission will promptly give notice to the persons on whose behalf the offering statement was filed (1) that such order has been entered, together with a brief statement of the reasons for the entry of the order, and (2) that the Commission, upon receipt of a writen request within 30 days after the entry of such order, will, within 20 days after the receipt of such request, set the matter down for hearing at a place to be designated by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

* * * * *

(d) All notices required by this rule shall be given to the person or persons on whose behalf the offering statement was filed by personal service, registered or certified mail or confirmed telegraphic notice at the addresses of such persons given in the offering statement.

§230.262 Consent to service of process.

(a) If the issuer, any of its directors or officers, any person for whose account any of the securities are to be offered, or any underwriter of the securities to be offered, is not a resident of the United States, each such non-resident person shall, at the time of filing of the offering statement required by §230.255, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which—

* * * * *

§230.263 Notice of delayed or suspended offering and sale

If within three business days after the issuer has received notice that the Commission has no further comments with respect to the offering statement a bona fide effort is not made to proceed with the offering and sale of the securities proposed to be offered under this regulation, or if the offering or sale of such securities is suspended by the issuer or any underwriter within 15 days after the issuer has received such notice, a notice of the delay or suspension, stating the reasons therefor, shall be filed by the issuer or underwriter with the Regional Office of the Commission with which the offering statement was filed, unless such information is set forth in the offering statement. Such notice shall be sent promptly by telegraph or air mail and if sent by telegraph shall be confirmed in writing within a reasonable time by the filing of a signed copy of the notice.

§230.264 Procedure with respect to abandoned offering statement.

When an offering statement under §§230.251 to 230.265, or the latest substantive amendment thereto, if any, has been on file with the Commission for a period of nine months from its filing date and the offering has not commenced, the Commission may, in its descretion, proceed in the following manner to determine whether such filing has been abandoned by the issuer:

(a) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of §§230.251 to 230.265 or be withdrawn within thirty days after the date of such notice.

(b) If the issuer or issuer's counsel fails to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within thirty days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the offering statement abandoned.

(c) When such an order is entered by the Commission, the papers comprising the offering statement and any amendment thereto will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated ...."

[Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; 84 Stat. 1480; sec. 308(a)(1)(2)(3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a)]

STATUTORY AUTHORITY

The Commission hereby proposes for comment *adoption of Form 7-A and* revisions to Form 1-A, Rule 251, and Rules 253 through 264 pursuant to the Securities Act of 1933, particularly sections 3(b) and 19(a).

By the Commission.

George A. Fitzsimmons
Secretary.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. Section 239.90 is proposed to be revised to read as follows:

§239.90 Form I-A, offering statement under Regulation A.

Date Filed __________
File No. __________

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C., 20549

REGULATION A OFFERING STATEMENT

Under the Securities Act of 1933

____
(Exact name of issuer as specified in charter)

____
(Address of principal executive offices)

____
(Address of principal place of business or intended principal place of business)

____
(Name and address of agent for service)

(State other jurisdiction of incorporation)	(Date of incorporation or organization)
(Standard industrial classification code number)*	(IRS employer I.D. number)*

*If, at the time of filing, the issuer is unable to supply its standard industrial classification code number or its IRS employer I.D. number, such information may be omitted and supplied by amendment prior to the commencement of the offering.

GENERAL INSTRUCTIONS

A. *Rule as to Use of the Offering Statement*

(a) This form is to be used for securities offerings made pursuant to Regulation A [17 CFR §§230.251 et seq.] under the Securities Act of 1933. Attention is directed to the rules applicable to offerings made pursuant to Regulation A which describe, among other things, the kinds of securities that may be sold, those issuers which may utilize Regulation A, and the amount of securities that may be exempted thereunder.

(b) Issuers utilizing Regulation A shall prepare an offering statement. All issuers shall provide the information which is called for by Part I—Notification and Part III—Exhibits, of the offering statement. Depending on the type of issuer, the kind of securities being issued, and the nature of the transaction in which the securities are being issued, issuers will be required to provide information required by the appropriate items of Part II—Offering Circular of the offering statement.

B. *Preparation of Offering Statement*

(a) Part I—Notification

Part I of the offering statement shall contain the numbers and captions of the items in Part I of the offering statement, but the text of the items may be omitted provided the answers are so prepared to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto.

(b) Part II—Offering Circular

(1) Part II of the offering statement shall contain the information required by items 1 through and including 13.

(2) Part II of the offering statement shall contain the information called for by the items which are applicable to the issuer pursuant to General Instruction B(b), except that no reference need be

made to inapplicable items and negative answers to any item may be omitted. Information provided in the offering circular should be presented in textural form rather than presenting item-by-item answers. The text of the items should be omitted from the offering circular.

The information required in the offering circular need not follow the order of the items or other requirements in Part II. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item. All information contained in the offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in the offering circular shall be divided into reasonably short paragraphs or sections.

Unless indicated otherwise, information set forth in any part of the offering circular need not be repeated elsewhere in the offering circular. Where necessary or desirable to call attention to information contained elsewhere in the offering circular, this may be done by an appropriate cross-reference.

(c) Part III—Exhibits

Part III of the offering statement shall include the index to exhibits and all exhibits required by that part. The text of the items in Part III need not be repeated in Part III provided the index clearly identifies each exhibit and the exhibits are in readable form.

(d) Printing

The offering statement may be printed, mimeographed, lithographed, or typewritten or prepared by any similar process which will result in clearly legible copies.

C. *Documents Comprising the Offering Statement*

The offering statement shall consist of the cover page, Part I—Notification, Part II—Offering Circular, Part III—Exhibits, the required signatures, and any other information or documents which are required or which the issuer may file as a part of the offering statement.

Each part of the offering statement may be amended independent of the other parts of the offering statement. Each amendment shall indicate which part(s) is being amended. An amendment to any part will, however, necessitate the filing of a new signature page.

D. *Supplemental Information*

Supplemental information submitted pursuant to any item in Part I—Notification, Part II—Offering Circular, or Part III—Exhibits of the offering statement will be returned to the person who submitted it provided a request for its return is made at the time such information is submitted to the Commission and provided further that return of such information is consistent with the protection of investors and the provisions of the Freedom of Information Act [5 U.S.C. 552]. In addition, issuers may request confidential treatment of supplemental information submitted to the Commission [17 CFR 200.83].

PART I—NOTIFICATION

Item 1. Significant Parties

(a) List the full name and business and residential addresses for (1)-(3) below. List the full name and business address for (4)-(13) below:

(1) the issuer's directors;

(2) the issuer's officers;

(3) the issuer's general partners;

(4) record owners of 10 percent or more of any class of the issuer's equity securities or any other person who has or shares the right to vote or direct the voting of such securities;

(5) promoters currently connected with the issuer;

(6) predecessors of the issuer;

(7) affiliates of the issuer;

(8) counsel to the issuer in connection with the proposed offering;

(9) each managing underwriter in connection with the proposed offering;

(10) the underwriter's directors;

(11) the underwriter's officers;

(12) the underwriter's general partners;

(13) counsel to the underwriter.

Item 2. Application of Rule 252(c)-(e)

(a) State whether any of the individuals or entities identified pursuant to Item 1 are subject to any disability described in Rule 252(c)-(e).

(b) If any such individual or entity is subject to the provisions of Rule 252: (1) provide a full description including pertinent names, dates and other details; and

(2) state whether or not an application has been made pursuant to Rule 252(f) for a waiver of the applicable provisions of Rule 252 and whether such application has been granted or denied.

Item 3. Application of Rule 253(a) and (b)

State whether or not the issuer is subject to the provisions of Rule 253(a) or (b).

Item 4. Jurisdictions in which Securities are to be Offered

(a) List the jurisdictions in which the securities are to be offered by underwriters, dealers or salespersons.

(b) List the jurisdictions in which the securities are to be offered other than by underwriters, dealers or salesmen and state the method by which such securities are to be offered.

(c) If the offering or any part thereof is to be made by use of the facilities of any securities exchange, identify the exchange.

(d) If the issuer is subject to Rule 253(b), state the Province(s) in which the securities have been or will be qualified or made eligible for offering.

Instruction. In the event an offering is to be made in jurisdictions or on exchanges not previously identified pursuant to this item, an amendment to the offering statement should be filed which identifies the new jurisdictions and exchanges.

Item 5. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this notification, state (1) the name of such issuer; (2) the title and amount of securities issued; (3) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof; (4) the names of the persons or the identity of the class of persons to whom the securities were issued.

Instruction: In responding to this subsection, issuers should consider the effect of the grant or exercise of options, warrants, or rights with regard to the issuer's securities.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this notification by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in 1 through 4 of paragraph (a).

(c) Indicate the section of the Act or rule or regulation of the Commission under which exemption from registration was claimed with respect to such securities and state briefly the facts relied upon for the exemption.

Item 6. Other Present or Proposed Offerings

State whether or not the issuer or any of its affiliated issuers is currently offering or currently contemplates the offering of any securities in the United States or Canada in addition to those covered by this notification. If so, describe fully the present or proposed offering.

Item 7. Marketing Arrangements

Briefly describe any arrangement known to the issuer or to any person named in answer to Item 4(d) or 10(a) of Part II made for any of the following purposes:

(a) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution.

(b) To stabilize the market for any of the securities to be offered.

(c) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of his participation.

(d) Identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Instructions: 1. If the information required by subsection (d) is not available at the time the offering statement is filed, an amendment to Part I—Notification, including such information, should be made prior to the commencement of the offering.

2. If the answer to this item is contained in an exhibit, the item may be answered by a cross-reference to the relevant paragraphs of the exhibit.

Item 8. Relationship with Issuer of Experts Named in Offering Statement

If any expert named in the offering statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

PART II—OFFERING CIRCULAR

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) Name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) Date of the offering circular;

(d) Description and amount of securities offered (*Note:* this description should include, for example, appropriate disclosure of redemption and conversion features of debt securities);

(e) The statement required by Rule 259;

(f) The table(s) required by Item 2;

(g) The name of the underwriter or underwriters;

(h) Any materials required by the law of any state in which the securities are to be offered;

(i) If applicable, identification of material risks in connection with the purchase of the securities; and

(j) Approximate date of commencement of proposed sale to the public.

Instruction: Where the name of the registrant is the same as the name of another well-known company or indicates a line of business in which the registrant is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

Item 2. Distribution Spread

(a) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit			
Total			

If the securities are to be offered on a best efforts basis the cover page should set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Price to Public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total Minimum			
Total Maximum			

Instructions: 1. The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. Prior to the commencement of sales pursuant to Regulation A, the issuer shall inform the Commission whether or not the amount of compensation to be allowed or paid to the underwriters, as described in the offering statement, has been cleared with the National Association of Securities Dealers, Inc.

4. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.

(b) Any finder's fees or similar payments shall be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure should identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof).

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a footnote to the table.

Item 3. Summary Information, Risk Factors and Dilution

(a) Where appropriate to a clear understanding by investors, there should be set forth in the forepart of the offering circular, under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the principal factors which make the offering one of high risk or speculative. *Note:* These factors may be due to such matters as an absence of an operating history of the issuer, an absence of profitable operations in recent periods, an erratic financial history, the financial position of the issuer, the nature of the business in which the issuer is engaged or proposes to engage, conflicts of interest with management, reliance on the efforts of a single individual, or the method of determining the market price where no market currently exists. Issuers should *avoid* generalized statements and include only those factors which are unique to the issuer.

(b) Where there is material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (a) the net tangible book value per share before and after the distribution; (b) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (c) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 4. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of security holders, indicate on the cover page the total amount to be offered for their account and include a cross-reference to a fuller discussion elsewhere in the offering circular. Such discussion should identify each selling security holder, state the amount owned by him, the amount offered for his account and the amount to be owned after the offering.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer should be stated.

Instruction: Attention is directed to the provisions of Rules 10b-9 [17 CFR §240.10b-9] and 15c2-4 [17 CFR §240.15c2-4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.

Item 5. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 2.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

6. The issuer may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately disclosed.

Item 6. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(a) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(b) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(c) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(d) The number of persons employed by the issuer, indicating the number employed full time.

(e) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environment control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) The following requirement in subparagraph (a) applies only to issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the offering statement.

(a) Describe, if formulated, the issuer's plan of operation for the twelve months following the commencement of the proposed offering. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Any engineering, management or similar reports which have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering should be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There should also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement should identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Division should be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements an appropriate cross-reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction. What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

(1) directors;

(2) persons nominated or chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions. 1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability in integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 9. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors of the issuer and all officers and directors as a group.

Name of individual or identity of group	Capacities in which remuneration was received	Aggregate Remuneration

Instruction: 1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof. 2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 10. Security Ownership of Management and Certain Security-Holders

(a) Voting securities and principal holders thereof.

Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class	(2) Name and address of owner	(3) Amount owned before the offering	(4) Amount owned after the offering	(5) Percent of class

Instruction: Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and group referred to in subsection (a) above:

Name of holder	Title and amount of securities called for by options, warrants or rights	Exercise price	Date of exercise

Instruction: Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the offering statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 11. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest;

(1) Any director of officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal security holder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instruction: 1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case if any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if

acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

6. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

Item 12. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being offered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modificaiton of the terms of the security, and similar provisions.

Instruction: In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities called for by such warrants, convertible securities or rights;

(2) the period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate informaiton of a comparable character.

Item 13. Financial Statements

Furnish the following financial statements of the issuer, or of the issuer and its predecessors, prepared in accordance with generally accepted accounting principles and practices in the United States or, in the case of a Canadian company, a reconciliation to such shall be provided. The statements required for the issuer's latest fiscal year shall be certified by an independent public accountant or certified public accountant if the issuer has filed or is required to file with the Commission certified financial statements for such fiscal year; the statements filed for the period or periods preceding such latest year need not be certified. Any report of an independent accountant shall comply with the requirements of Article 2 of Regulation S-X.

(a) A balance sheet shall be furnished as of a date within 90 days prior to the filing of an offering statement or such longer period of time, not exceeding six months, as the Commission may permit at the written request of the issuer upon a showing of good cause therefor.

(b) Statements of income, statements of changes in financial condition, and statements of other stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed and for the interim period, if any, between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period specified above.

If an unaudited income statement for an interim period is filed, a statement shall be made that all adjustments necessary for a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise there shall be furnished as supplementary information, but not as a part of the offering statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(c) Past succession to other businesses.

(1) If, during the period for which its income statements are required, the issuer has by purchase or by pooling of interests succeeded to one or more businesses which in the aggregate are significant, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheet being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any interim periods. In addition, furnish income statements, separate or combined as appropriate, for such business or businesses for such period prior to the purchase as may be necessary when added to the time, if any, for which income statements after the purchase are filed to cover the same period for which income statements of the issuer are required in Item (b) above.

(2) the term "significant subsidiary" means (a) a subsidiary or (b) a subsidiary and its subsidiaries which meet any of the conditions described below based on (i) the most recent annual financial statements, including consolidated financial statements, of such subsidiary which would be required to be filed if such subsidiary were an issuer and (ii) the most recent annual consolidated financial statements of the issuer being filed:

1. the parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets (after intercompany elimination) of, the subsidiary exceed 10 percent of the total assets of the parent and its consolidated subsidiaries.

2. the parent's and its other subsidiaries' proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total sales and revenues of the parent and its consolidated subsidiaries.

3. the parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10 percent of such income of the parent and its consolidated subsidiaries, provided that if such income of the parent and its consolidated subsidiaries is at least 10 percent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination. *Note:* This instruction shall not apply with respect to the issuer's succession to the business of any totally held subsidiary or to the succession of one or more businesses which, considered in the aggregate, would not meet the test of a significant subsidiary.

(d) Future successions to other businesses.

(1) If, after the date of the most recent balance sheet filed pursuant to paragraph (a) above, the issuer by purchase or by pooling of interests succeeded or is about to succeed to one or more businesses or acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such business financial statements, combined if appropriate, which would be required if they were the issuer. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (i) a balance sheet of the issuer, (ii) the balance sheets of the constituent businesses, (iii) the changes to be effected in the succession, and (iv) the pro forma balance sheet of the issuer giving effect to the plan of succession. There shall also be filed pro forma statements of income in columnar form for the periods for which the results

of operations of the acquired business would have been included in the issuer's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had succession occurred on the date of the latest balance sheet filed. By a note to the financial statements, or otherwise, a brief explanation of the changes shall be given.

(2) the acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control.

(3) no financial statements need be filed, however, for any business acquired or to be acquired, or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subisidiary as defined above.

PART III—EXHIBITS

Item 1. Index to Exhibits

(a) An index to the exhibits filed should be presented immediately following the cover page of Part III.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 3.

(c) The index to exhibits should identify the location of the exhibit under the sequential numbering system.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index to exhibits.

Instructions: (1) Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any offering statement.

(2) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

Item 2. Description of Exhibits

Set forth below is a description of each document for which copies should be filed, where appropriate:

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of (1) holders of the equity or debt securities being issued; (2) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed; and (3) holders of a new class of securities or indebtedness, the creation of which was required to be disclosed in a periodic report.

(b) Where the instrument defines the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being issued if the total amount of securities authorized thereunder does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the issuer of the securities being issued; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(4) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(5) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest. (b) If the contract is such as

ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the offering statement or report, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of issuer's products or services or to purchase the major part of issuer's requirement of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which issuer's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 10% of all such assets of the issuer and its subsidiaries; or

(4) Any lease under which a significant part of the property described in the offering statement as held by the issuer.

(c) Any management contract or any remunerative plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(6) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is an offering statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(7) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report.

(8) *Statement concerning issuer's financing*—If any of the securities proposed to be offered hereunder are to be offered for the account of any person other than the issuer, a written statement signed by the issuer representing that the proposed offering will not interfere with any needed financing by the issuer under this regulation.

(9) *Escrow agreements*—(a) Any escrow agreement or similar arrangement which has been executed in order to effect compliance with Rule 253(c) shall be filed and may be prepared in conformity with Form 7-A. (b) In the event the offering is contingent upon a minimum purchase requirement, any escrow agreement applicable to the proceeds received up to the minimum amount required.

(10) *Consents*

(a) Experts—(i) If any accountant, engineer, geologist, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering statement or is named as having prepared or certified a report or evaluation, whether or not for use in connection with the offering statement; (ii) if any portion of the report of an expert is quoted or summarized as such in the offering statement, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization; (iii) if it is stated that any information contained in the offering statement has been reviewed or passed upon by any persons and that such information is set forth in the offering statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed with the offering statement.

(b) Consent and certification by underwriter—A written consent and certification, in the form set forth below, signed by each underwriter of the securities proposed to be offered hereunder. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters.

Consent and Certification by Underwriter

1. The undersigned hereby consents to being named as underwriter in an offering statement filed with the Securities and Exchange Commission by (name of issuer) pursuant to Regulation A in connection with a proposed offering of (title of securities) to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth in such offering statement with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Parts I, II and III of the Offering Statement thereto, and do not omit any information required to be stated therein with respect of any such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

____
(Underwriter)

By ____________________

Date __________

3. If a Preliminary Offering Circular will be distributed as permitted by Rule 256(i), the Consent and Certification by Underwriter shall include the following additional paragraph:

The undersigned hereby undertakes, in connection with any distribution of the Preliminary Offering Circular as permitted by Rule 256(i), (a) to keep an accurate and complete record of the name and address of each person furnished such Preliminary Offering Circular and (b) if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering or an offering circular of the type referred to in Rule 256(i)(4) to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(c) Consent of non-resident—Each consent to service of process required by Rule 262 shall be filed. Each such consent shall be prepared and executed in conformity with the appropriate form prescribed therefor.

(d) Formal requirements—All written consents filed shall be dated and manually signed.

(e) Application to dispense with consent—An application to the Commission to dispense with any written consent of an expert shall be made by the issuer and shall be supported by an affidavit or affidavits establishing that the obtainng of such consent is impracticable or involves undue hardship on the issuer.

SIGNATURE

This offering statement has been signed in the City of ________________ State (or Province) of __________ on ______________, 19 _____ .

____
(Issuer)

By __________________________________
(Name and title)

____
(Selling security holder)

2. Section 239.96 is proposed to be added to read as follows:

§239.96 Form 7A, optional form of escrow for securities that are subject to the provisions of Rule 253(c) of Regulation A (§230.253(c) of this chapter).

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

FORM 7-A

[As adopted in Release No. 33- , ____, 1980]

OPTIONAL FORM OF ESCROW FOR SECURITIES THAT ARE SUBJECT TO THE PROVISIONS OF RULE 253(c) OF REGULATION A

(Pursuant to Regulation A under Securities Act of 1933)

This escrow agreement entered into this ____ day of ____________, 19 __, between (the issuer), a corporation organized under the laws of the State of ____________, hereinafter referred to as the "Corporation," and (*the purchaser*) of (*address*), hereinafter referred to as "Purchaser," and (*independent agent*) of (*address*), hereinafter referred to as the "escrow agent", witnesseth:

Whereas in order to comply with the provisions of Rule 253(c) of the General Rules and Regulations under the Securities Act of 1933, as amended, hereinafter referred to as the "General Rules and Regulations," the Corporation simultaneously with the execution of this agreement is depositing with the escrow agent (*number*) shares of the (*class*) stock of the Corporation issued in the name of Purchaser and bearing certificate No. ________, the deposit of which is hereby acknowledged by the escrow agent:

Now, therefore, the parties hereto agree as follows:

1. The escrow agent hereby accepts said shares in escrow and agrees to hold and keep said shares in accordance with the terms and conditions hereof and for the uses and purposes herein set forth, and to deliver said shares upon the performance of the conditions hereinafter set forth.

2. The escrow agent shall not be held to take notice of any terms of any agreement or any rights stated with respect to the deposited shares unless expressly stated in writing herein.

3. During the period of holding the deposited shares in escrow, no transfer or any other disposition of any of said shares or of any interest therein is to be made whether subject to this escrow agreement or otherwise but all of said shares are to be held intact as issued and placed in escrow hereunder.

4. The escrow agent is hereby authorized and instructed to hold the deposited shares in escrow, pursuant to Rule 253(c) of the General Rules and Regulations, until such date as shall be thirteen months from the date, shown on a definitive offering circular, of an offering of shares of stock of the Corporation in accordance with the provisions of the General Rules and Regulations. Thereafter upon receipt of written advice by the Corporation and Purchaser to the escrow agent (and to the Securities and Exchange Commission) that none of the deposited shares or any interests therein have been transferred or otherwise disposed of and that the deposited shares are registered under the Securities Act of 1933, as amended, or covered by a filing pursuant to the provisions of Regulation A under the General Rules and Regulations, or are otherwise exempt from registration or are not then required to be registered and that a copy of such advice has been delivered to the Securities and Exchange Commission, said shares will be delivered to Purchaser by escrow agent. If a registration satement is not then in effect and if an appropriate filing under Regulation A has not been completed under said Act with respect to the deposited shares, prior to delivery of the deposited shares to Purchaser by escrow agent, (i) Corporation and Purchaser will advise escrow agent that Corporation and Purchaser have instructed the transfer agent for the deposited shares to the effect that no transfer of the deposited shares shall be made unless a registration statement under the Securities Act of 1933, as amended, with respect to such shares is in effect or an exemption from the registration requirements of such Act is in fact applicable to such shares and (ii) Corporation shall impress upon the face of the certificate or certificates representing the deposited shares and upon all certificates issued in exchange therefor the following legend:

> "No sale, offer to sell or transfer of the shares represented by this certificate shall be made unless a registration statement under the Federal Securities Act of 1933, as amended, with respect to such shares is then in effect or an exemption from the registration requirements of such Act is then in fact applicable to such shares."

5. The fee of the escrow agent for its services hereunder shall be $ ________, payable at the time of the execution of this agreement, to be borne by ______________________________.

6. In performing any of its duties hereunder, the escrow agent shall not incur any liability to anyone

for any damages, losses, or expenses except for willful default or negligence, and it shall accordingly not incur any such liability with respect (i) to any action take or omitted in good faith upon advice of its counsel or counsel for the Corporation given with respect to any questions relating to the duties and responsibilities of the escrow agent under this agreement, or (ii) to any action taken or omitted in reliance upon any instrument, including the written advices provided for herein, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the escrow agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this agreement.

7. The Corporation and Purchaser, jointly and severally, hereby agree to indemnify and hold harmless escrow agent against any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon escrow agent or incurred by escrow agent in connection with its acceptance of appointment of escrow agent hereunder, or the performance of its duties hereunder, including any litigation arising from this agreement or involving the subject matter hereof or the shares deposited hereunder.

IN WITNESS WHEREOF, (*Corporation*) and (*escrow agent*) have caused this agreement to be executed by thier respective officers, thereunto duly authorized, (*Purchaser*) has signed this agreement as of the day and year first above written.

(Corporation)
By:____________________________
(Title)
(Escrow Agent)
By:____________________________
(Title)
____________________________ (I.S.)

* * * * *

SECURITIES ACT OF 1933
Release No. 6276/December 23, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17399/December 23, 1980

PROPOSED REVISION OF REGULATION S-K AND GUIDES FOR THE PREPARATION AND FILING OF REGISTRATION STATEMENTS AND REPORTS

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposals (i) to categorize by subject matter Regulation S-K, the repository of standard instructions for disclosure under the Securities Act of 1933 and the Securities Exchange Act of 1934; and (ii) to expand that Regulation by adding uniform disclosure requirements with respect to the distribution of securities. Registration statement forms would also be revised to incorporate by reference such uniform disclosure requirements. The Commission is also publishing for comment proposals (i) to eliminate the Guides for the Preparation and Filing of Registration Statements and Reports, with the exception of the Guides for disclosure by registrants in a particular industry; and (ii) to incorporate certain of the requirements thereof into Regulation S-K, Regulation C (the rules governing the registration of securities under the Securities Act), and the General Rules and Regulations under the Securities Act and the Exchange Act. These proposals would eliminate outmoded and duplicative requirements, would enhance the integration of disclosure systems by consolidating and organizing disclosure provisions in Regulation S-K, and would consolidate procedural provisions in general rules and regulations.

DATE: Comments should be received on or before March 6, 1981.

ADDRESSES: Comments should be addressed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 50 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-869. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth Norsworthy, (202) 272-2390 or Beverly Rubman, (202) 272-2604, Office of Disclosure Policy, Division of Corporation Finance, and with respect to market-related matters, Carlos Morales, (202) 272-2878, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: As the next major step in the integration of disclosure requirements under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.], and as the first major step in a "sunset" review of all existing rules and regulations, the Commission is proposing certain revisions of (i) Regulation S-K [17 CFR 229.20]; (ii) the Guides for the Preparation and Filing of Registration Statements and Periodic Reports (the "Guides") (as originally adopted in Release No. 33-4936 (December 9, 1968) [33 FR 18617]); and (iii) the General Rules and Regulations under the Securities Act [17 CFR 230.100 et seq.] and under the Exchange Act [17 CFR 240.0-1 et seq.]. Registration statement forms [17 CFR 239.11 et seq.; 17 CFR 249.210 et seq.] would also be revised to incorporate by reference new uniform disclosure requirements included in Regulation S-K. These proposals would eliminate unnecessary regulations and consolidate and organize substantive and procedural rules.

I. OVERVIEW

A. *Regulation S-K*

Since the publication of the Report of the Advisory Committee on Corporate Disclosure on November 3, 1977[1], the Commission has implemented as rapidly as possible that Committee's recommendation to integrate the disclosure systems under the Securities Act and the Exchange Act[2], and to avoid "duplicative, unnecessary, or impractical reporting requirements."[3] The implementation of the Advisory Committee's recommendations commenced with the promulgation of Regulation S-K as the source of uniform disclosure items[4] and accelerated during the past year with the proposal and adoption of additional uniform disclosure items[5] the revision of certain Exchange Act periodic reports[6] and the revision of Securities Act registration statements to incorporate by reference such revised periodic reports.[7] In the release proposing new registration forms, the Commission recognized that "the multiplication of disclosure item requirements in Regulation S-K is a recognized prerequisite to the full integration of the registration and reporting requirements under the two Acts."[8]

The proposed revision of Regulation S-K represents the next major step in the Commission's program to integrate the disclosure requirements under the Securities Act and the Exchange Act. In this release the Commission is proposing the categorization by subject matter of the uniform disclosure items in Regulation S-K and the expansion of that Regulation to include uniform disclosure items with respect to the distribution of securities. Revision of registration statement forms to incorporate such items by reference is also proposed.

Generally, if the proposals are adopted, Regulation S-K would be subdivided into seven categories: (1) Application [17 CFR 229.10]; (2) Business [17 CFR 229.20]; (3) Financial Information [17 CFR 229.21]; (4) Management [17 CFR 229.22]; (5) Securities of the Registrant [17 CFR 229.23]; (6) Distribution of Securities [17 CFR 229.24]; and (7) Other [17 CFR 229.25]. The existing items of Regulation S-K would be renumbered and relocated without change according to subject matter; for example, Item 3 [Directors and Executive Officers] would become Item 20 under Management [17 CFR 229.22]. In addition, most of the disclosure items of proposed Forms A, B and C[9] would become uniform disclosure items under Distribution of Securities [17 CFR 229.24]; for example, Item 3 of proposed Form A [Plan of Distribution][10] would become Item 42 [Plan of Distribution] in that subsection of Regulation S-K. Finally, proposed Forms A, B and C, as well as other commonly used registration statement forms,[11] would be revised to substitute references to the applicable Regulation S-K item for the proposed, or current, text of the registration statement item; for example, proposed Form A, when adopted in final form, would substitute reference to Item 42 of Regulation S-K [Plan of Distribution] for the proposed text of Item 3 [Plan of Distribution] in Form A itself. Table I, *infra*, Proposed Revisions of Regulation S-K (appearing as section II-C hereof, Regulation S-K—Table of Proposals) summarizes the changes proposed with respect to regulation S-K.

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[1] Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977) ("Advisory Committee").

[2] *Id.* at 420-470.

[3] *Id.* at 316.

[4] *See* Release No. 34-14306 (December 23, 1977) [42 FR 65554].

[5] *See* Release No. 33-6230 (August 27, 1980) [45 FR 58822] adopting Item 7 [Exhibits] of Regulation S-K; Release No. 33-6231 (September 2, 1980) [45 FR 63630] adopting Item 9 [Market Price of the Registrant's Common stock and Related Security Holder Matters], Item 10 [Selected Financial Data], and Item 11 [Management's Discussion and Analysis of Financial Condition and Results of Operations]; and Release No. 33-6233 (September 2, 1980) [45 FR 63660] adopting Item 12 [Supplementary Financial Information].

[6] *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630] adopting revisions to Form 10-K; and Release No. 33-6236 (September 2, 1980) [45 FR 63724] proposing revisions to Form 10-Q.

[7] *See* Release No. 33-6190 (February 22, 1980) [45 FR 13438] adopting revisions to Form S-8; and Release No. 33-6235 (September 2, 1980) [45 FR 63693] proposing Forms A, B and C.

[8] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693].

B. *Guides for the Preparation and Filing of Registration Statements and Reports*

Following the Advisory Committee's suggestion that a periodic "re-evaluation of all of the outstanding rules and regulations of the Commission will keep the disclosure requirements current and effective and prevent the development of an encrusting layer of unnecesary and irrelevant information,"[12] the Commission has undertaken to review its rules and regulations with a view to eliminating unnecessary and out-moded requirements.

These proposals represent the first major step in this sunset review program,[13] and involve the following: (1) the proposed withdrawal of most of the Guides except those which pertain to disclosure by certain industries; (2) the transfer to Regulation C of those Guides which relate to procedural matters; and (3) the transfer to Regulation S-K of those Guides which set forth certain disclosure requirements. Thus, if the proposals are adopted, of the 68 present Guides, 22 or over 30% of the existing Guides would be withdrawn entirely as being out-of-date, 6 would remain as industry guides, and the remainder would be incorporated with generally minor and non-substantive modifications into Regulation S-K and Regulation C. In a few cases modifications are proposed in the General Rules under the Securities Act and the Exchange Act. Table II, *infra*, Proposed Revision of Guides, (appearing as Section III-D hereof, Guides—Table of Proposals) indicates what changes have been proposed with respect to each Guide. Table III, *infra*, Proposed Revisions to Rules Based on Changes in Guides (appearing as Section III-F hereof, Guides—Table of Rules Affected by Proposals) indicates the changes which are proposed in rules arising from revision of the Guides.

C. *Relationship with Existing and Proposed Disclosure Requirements*

These proposals should be considered in conjunction with other existing regulations, such as the specific items of Regulation S-K, and with other proposals, particularly the three-tier system of registration under the Securities Act which was recently proposed—Forms A, B, and C.[14] In general, these proposals transfer material from the Guides to other forms and rules, while making only minimal technical changes in those other forms and rules. This approach was taken in order to identify clearly the changes which are proposed and to avoid confusion. Special care was taken not to alter the text of existing items of Regulation S-K or proposed items of Forms A, B and C. Accordingly, if these proposals are adopted, it may be necessary to make additional technical changes to avoid duplication and to consolidate and revise the requirements based on the Guides into existing or already proposed requirements.

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[9] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693].

[10] *Id.* at 63711.

[11] Forms S-8 [17 CFR 239.16b], S-11 [17 CFR 239.18], S-14 [17 CFR 239.23], S-15 [17 CFR 239.29], 10 [17 CFR 249.210], and 20-F [17 CFR 249.220f].

[12] Advisory Committee at 338.

[13] The proposals reflect the comments received in response to the concept release announcing the re-evaluation of the Guides. *See* Release No. 33-6163 (December 5, 1979) [44 FR 72604].

[14] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693].

For example, at the time of adoption, the references in existing and proposed forms to the present items in Regulation S-K would be changed to comport with the new numbering scheme. In addition, where the requirements of an item of Regulation S-K are to be incorporated into a particular form, it will be necessary to amend the form at that time to provide for such incorporation. Table I (Section II-C, *infra*) sets forth each form into which each proposed item of Regulation S-K would be incorporated.

As noted above, the uniform disclosure items with respect to the distribution of securities proposed to be added to Regulation S-K consist of the text of the disclosure items contained in proposed Forms, A, B and C, plus certain disclosure requirements based on the Guides. The proposed uniform disclosure items with respect to the distribution of securities as finally adopted will therefore reflect comments received with respect to proposed Forms A, B and C[15] as well as comments received with respect to the instant release. Moreover, the Commission may consolidate additional provisions of existing and proposed forms, such as the provisions relating to incorporation by reference, in new items of Regulation S-K. The Commission intends to consider the adoption of proposed Forms A, B and C and these proposals at or about the same time.

If these proposals are adopted, the only Guides that will remain will be those pertaining to disclosure by certain industries: Guide 30, relating to disclosure of principal sources of electric or gas revenues; Guide 55, relating to interests in oil and gas programs, which will be subject to separate re-evaluation in the near future; Guide 57, relating to preparation of registration statements involving insurance premium funding programs; Guide 60, relating to preparation of registration statements for interests in real estate limited partnerships, which will be subject to separate re-evaluation in the near future as part of a joint effort with the North American Securities Administrators Association; and Guide 61 (and Exchange Act Guide 3), relating to statistical disclosure by bank-holding companies. It is proposed that, at the time of adoption, the Commission will renumber these industry Guides, and make all of them applicable under both the Securities Act and the Exchange Act.

D. *"Sunset" Review of Regulation C*

While the transfer of certain Guide provisions to Regulation C has necessitated proposed modifications to certain existing rules and the proposal of new rules, such as proposed Rule 462A relating to registrations for delayed or continuous offerings, these proposals do not otherwise involve a revision of Regulation C. The Commission currently intends as part of its "sunset" program to review Regulation C for the purpose of deleting unnecessary and outmoded procedural requirements. While this "sunset" review will be the subject of a separate notice and comment process, the Commission does request specific comment now on any changes in Regulation C that might be necessary in connection with implementation of the proposals in this release or proposed Forms A, B and C, all of which the Commission expects to consider for adoption at or about the same time.

* * * * *

The remainder of this release consists of two parts. One discusses the proposed revisions to Regulation S-K, with an introductory discussion of the development of Regulation S-K, and a detailed explanation and table of the proposed revisions to that Regulation. The next contains an introductory discussion of the development of the Guides, a discussion of commentator reaction to the general issues which were raised by an advance concept release,[16] an explanation and table of the proposed revisions, and a table of the rules which would be affected by such revisions.

II. REGULATION S-K

A. *Background*

Regulation S-K was adopted on December 23, 1977 in response to the recommendation of the Advisory Committee on Corporate Disclosure that the disclosure systems under the Securities Act and under the Exchange Act be integrated further.[17]

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[15] *See* proposed Forms A, B, and C. Release No. 33-6235 (September 2, 1980) [45 FR 63693]. The comment period for proposed Forms A, B and C closes January 15, 1981.

[16] *See* n. 13 *supra*.

[17] Advisory Committee at 420-470. Regulation S-K was initially proposed as Form SK in response to tentative recommendations of the Advisory Committee contained in minutes of the sixth meeting of that Committee on February 7 and 8, 1977. *See* Release No. 33-5826 (May 10, 1977) [42 FR 26010].

In the decade prior to the publication of the Advisory Committee Report, commentators expressed concern over the bifurcated disclosure systems and called for closer coordination of Securities Act and Exchange Act disclosure.[18] In response to that concern, in the years preceding the publication of the Advisory Committee Report, the Commission announced its objective of coordinating and integrating the two systems;[19] attempted to conform disclosure requirements under both Acts[20]; introduced simplified registration statement Forms S-7 and S-16[21]; and proposed an integrated disclosure Form SK.[22]

Following the Advisory Committee's endorsement of the integration concept in November 1977, the Commission promulgated proposed Form SK as Regulation S-K[23] so that the new integrated disclosure regulation would be included in the Code of Federal Regulations ("CFR"). By inclusion in CFR, the Regulation is updated annually and is more readily available to registrants who need to obtain a current copy.[24] Although Regulation S-K initially contained only two items (Description of Business and Description of Property), the Commission stated that additional items would be adopted "as disclosure provisions involving more than one of the various forms for the registration of securities or for the reporting to or solicitation of security holders are amended."[25]

In July 1978, the Commission added four additional items to Regulation S-K [Item 3—Directors and Executive Officers, Item 4—Management Remuneration and Transactions, Item 5—Legal proceedings and Item 6—Security Ownership of Certain Beneficial Owners and Management], noting that most of the commentators believed that uniform disclosure requirements save registrants time in securing interpretations and gathering facts, thereby enabling them to concentrate on the resolution of complex disclosure issues. In view of the favorable reaction to Regulation S-K, the Commission stated that eventually all general disclosure requirements under the securities acts would be contained therein.[26]

With the acceleration of integration over the past six months—the proposal and adoption of six more uniform disclosure items in Regulation S-K,[27] the revision of Exchange Act periodic reports[28] and the revision of Securities Act registration statement forms to incorporate by reference such reports[29]—the categorization and expansion of Regulation S-K is now appropriate.

B. *Proposals*

The Commission proposes that Part 229 [Standard Instructions for Filing Forms under Securities Act of 1933 and Securities Exchange Act of 1934—Regulation S-K] be divided into seven sections relating to the following subjects:

1. Application (§229.10)

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[18] *See generally* Cohen, Truth in Securities Revisited," 79 Harv. L. Rev. 1340 (1966); and SEC, Disclosure to Investors (Wheat Report) (1969).

[19] See Release No. 33-5274 (July 26, 1972) [37 FR 16005].

[20] *See*, e.g., Release No. 33-5395 (June 1, 1973) [38 FR 17202] and Release No. 33-5758 (July 26, 1976) [41 FR 32539].

[21] See Release No. 33-4886 (December 14, 1967) [32 FR 17934] and Release No. 33-5117 (December 23, 1970) [36 FR 777]. The use of such Forms is predicated, in part, upon the registrant's status as a continuously reporting company under the Exchange Act. Form S-16 also allows registrants, in certain limited instances, to incorporate by reference periodic reports filed under the Exchange Act.

[22] *See* Release No. 33-5826 (May 10, 1977) [42 FR 26010].

[23] *See* Release No. 34-14306 (December 23, 1977) [42 FR 65554].

[24] *See* Release No. 33-5949 (July 28, 1978) [43 FR 34402].

[25] *See* Release No. 33-5983 (December 23, 1977) [42 FR 65561].

[26] *See* Release No. 33-5949 (July 28, 1978) [43 FR 34402].

[27] *See* n. 5 *supra*.

[28] *See* n. 6 *supra*.

[29] *See* n. 7 *supra*.

2. Business (§229.20)

3. Financial Information (§229.21)

4. Management (§229.22)

5. Securities of the Registrant (§229.23)

6. Distribution of Securities (§229.24)

7. Other (§229.25)

The existing twelve uniform disclosure items would be relocated without change, according to subject matter; for example, Item 4 [Management Remuneration and Transactions] would become Item 21 in Section 229.22 [Management]. The substantive disclosure requirements proposed in Forms A, B and C[30] and the provisions from twenty-eight of the existing Guides, with only minor modifications, would also be incorporated in Regulation S-K.

Substantive disclosure provisions from the Guides would be added to the distribution items from Forms A, B and C to which they relate; *e.g.*, the disclosure required by Guide 5 with respect to the absence of a market for the securities to be registered is proposed to be added to the text of Item 6 of proposed Form A and consolidated as proposed Item 45 [Securities to be Registered] of Regulation S-K. As noted above, the Commission currently anticipates that proposed Forms A, B and C and the proposed revisions to Regulation S-K and the Guides will be considered for adoption contemporaneously. At that time, certain technical changes may be necessary in order to achieve consistency between the text of the items in proposed Forms A, B and C and the text of the proposed additions from the Guides.

C. *Table of Proposals*

A table of the proposed revision of Regulation S-K appears below. The table shows the number and caption of the proposed item, the source of that item, for example, an existing item of Reguation S-K, an item in proposed Forms A, B or C, a substantive disclosure provision of a Guide, or a rule or release), and the registration statement forms which would incorporate by reference that item. It should be noted that the numbering system of proposed items in Regulation S-K may be changed at the time of final adoption in order to allow for the addition of uniform disclosure items in the future. It should also be noted that, at the time of adoption, cross-references to Regulation S-K items in the existing rules, forms and schedules will be updated to reflect the new numbers assigned to those items.

TABLE I

PROPOSED REVISION OF REGULATION S-K

Proposed S-K Item Number and Caption	Source				Forms to be Affected
	Existing S-K Item	Item in Proposed Forms A, B or C	Guide	Rule	
§229.10 - Application	Introductory Paragraph				
§229.20. - Business					
1. Description of Business	1				B, C, S-14, 10, 10-K, Reg 14A/C

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[30] The text of proposed Forms A, B and C is substantially similar to the text of the comparable items in Forms S-1, S-2, S-7 and S-16, the most frequently used registration statement forms.

2. Description of Property	2				C, S-14, 10, 10-K, Reg 14A/C
3. Legal Proceedings	5				C, S-11, S-14, 10, 10-K, 10-Q, Reg. 14A/C
§229.21 - Financial Information					
10. Selected Financial Data	10				A, B, C, S-11, S-14, S-15, 10, 10-K, Reg. 14A/C
11. Supplementary Financial Data	12				A, B, C, S-11, S-14, S-15, 10, 10-K, Reg. 14A/C
12. Management's Discussion and Analysis of Financial Condition and Results of Operations	11				B, C, S-11, S-14, S-15, 10, 10-K, Reg. 14A/C

§229.22 - Management

Proposed S-K Item Number and Caption	Source				Forms to be Affected
	Existing S-K Item	Item in Proposed Forms A, B or C	Guide	Rule	
20. Directors and Executive Officers	3				C, S-11, S-14, S-15, 10, 10-K, Reg. 14A/C
21. Management Remuneration and Transactions	4		63		C, S-11, S-14, 10, 10-K, 20-F, Reg. 14A/C

§229.23 - Securities of Registrant

Proposed S-K Item Number and Caption		Source			Forms to be Affected
	Existing S-K Item	Item In Proposed Forms A, B, C	Guide	Rule	
30. Market Price of the Registrant's Common Stock and Related Security Holder Matters	9				B, C, S-14, S-15, 10, 10-K, Reg. 14A/C
31. Security Ownership of Certain Beneficial Owners and Management	6				C, S-11, S-14, S-15, 10, 10-K, Reg. 14A/C
§229.24 - Distribution of Securities					
40. Cover Page of Prospectus		A-1 B-3	5, 7, 15, 54,	425	A, B, C, S-8, S-11, S-14, S-15
41. Summary Information		A-2	6,47 58, 59		A, B, C, S-11, S-14, S-15,
42. Plan of Distribution		A-3	5, 6, 11, 14, 16, 17.35,53		A, B, C, S-11, S-14, S-15
43. Use of Proceeds to Registrant		A-4	21		A, B, C, S-11
44. Selling Security Holders		A-5			A, B, C, S-14, S-15
45. Securities to be Registered		A-6	5,6,12,13 18,32,33, 36,39,52		A, B, C, S-8, S-11, S-14, S-15, 10
46. Other Expenses of Issuance and Distribution		A-9			A, B, C, S-8, S-11, S-14, S-15
47. Interest of Experts Named in Registration Statement		A-10			A, B, C, S-8, S-11, S-14, S-15, 10

48. Indemnification of Directors and Officers		A-11	46	A, B, C, S-8, S-11, S-14, S-15, 10
49. Recent Sales of Unregistered Securities		C-14		C, S-11, S-14, 10
§229.25 Other				
50. Information Available Concerning the Registrant			48	A, B, C, S-11, S-14, S-15
51. Exhibits	7		38,39	A, B, C, S-8, S-11, S-14, S-15, 10, 8-K, 10-K, 10-Q
52. Commission Policy on Projections			62	All forms, regulations and schedules under the Securities Act and the Exchange Act

III. GUIDES

A. *Background*

In early 1962, Chairman William L. Cary announced the Commission's concern over a substantial increase in the number of filings under the Securities Act, particularly filings by first-time public issuers. The backlog in filings and inordinate length of the pre-effective period was attributable primarily to the high volume and low quality of first-time filings. These registration statements were subject to as many as four major amendments, apparently due to the inexperience of counsel and accountants, the scarcity of financial information available concerning the company and the complexity of the re-organization which usually prefaces the decision "to go public."[31]

In order to shorten the comment process, the Commission announced one month after Chairman Cary's speech—its intent of "publishing from time to time expressions of its views which may be of assistance to issuers, their counsel and other preparing registration statements.[32] The Commission published the predecessors of Guide 35, requiring the registrant to identify, where practicable, any member(s) of the board of directors selected by the underwriters, and Guide 23, outlining the circumstances under which the registrant should update financial statements and related data contained in the preliminary prospectus.

In February 1964, the Commission published thirty-two guides for the preparation and filing of registration statements, including the original two guides described above. At that time, the Commission stated that it was expected that such guides would be of assistance not only to the public but also to the staff by relieving the staff of the necessity of commenting on the matters convered. The Commission also alerted registrants that

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[31] *See* Release No. 33-4468(a) (March 23, 1962).

[32] *See* Release No. 33-4475 (April 26, 1962) [27 FR 33990].

"[s]ome of the policies [might] be incorporated later in the rules or forms."[33]

In December 1967, the Commission proposed a revised and expanded package of guides, noting that the staff and the public had suggested in the interim certain modifications of the original guides. The Commission again alerted the public to the possibility that some of the policies might later be incorporated in the rules and forms after suitable publication and opportunity for comment.[34]

The fifty-three guides adopted in late 1968[35] have been subsequently modified and expanded to add ten additional guides for the preparation and filing of registration statements, as well as five guides for the preparation and filing of periodic reports under the Exchange Act. These guides have been added serially, without organization by subject matter.

The modification and expansion of the Guides were responsive primarily to (i) anticipated disclosure problems; (ii) the findings arising out of the Commission's investigation of the hot issues securities markets[36]; (iii) recommendations of the Industrial Issuers Advisory Committee[37]; and (iv) recommendations of the Advisory Committee on Corporate Disclosure.[38]

(i) *Anticipated disclosure problems.* The amendment of Guide 28 [Disclosure of Extractive Reserves and Natural Gas Supplies] in 1974 exemplifies the Commission's use of the Guides to deal with anticipated disclosure problems in a given area. In late 1973, the Commission warned registrants of their obligation to disclose any material impact that potential fuel shortages might have on certain industries and issuers.[39] A few months later, the Commission proposed amendment of Guide 28 to add a new paragraph relating to disclosure lby companies engaged in the gathering, transmission or distribution of natural gas.[40] The Commission reiterated the need for prompt and accurate disclosure of favorable and unfavorable information concerning such firms' current and anticipated supplies of natural gas and the actual or possible impact which a demand for natural gas in excess of current supply might have.[41]

(ii) *Investigation of Hot Issues.* Several amendments of the Securities Act Guides resulted from the Commission's publication of the results of the hot issues hearings.[42]

On October 20, 1971, the Commission ordered a public investigation in the matter of the hot issues securities market. Public hearings were held on a continuous basis from February 28, 1972 to June 8, 1972 to investigate those instances where a new offering of securities is sold at a substantial premium over the initial offering price immediately, or very soon after, the securities are first distributed to the public. The Commission concluded that since such issues are highly speculative the disclosure contained in the registration statements and offering circulars should "reflect. . .the true economic realities" of the investment.[43]

In order to elicit better disclosure, particularly with respect to highly speculative initial offerings, the Commission introduced Guide 59, requiring that any lengthy or complex prospectus be preceded by a summary of its contents,[44] and adopted amendments to Guide 5 instructing registrants to avoid "boiler plate" and to disclose the manner in which the offering price was determined[45]; Guide 6 instructing registrants to illustrate graphically the dilution of shareholders' equity[46]; Guide 16, stating that the Commission may request the underwriter of a new or speculative issue to explain supplementally the steps taken in its due diligence inquiry to verify the disclosure in the prospectus;[47] and Guide 21, instructing registrants to illustrate graphically the intended use of proceeds from the offering.[48]

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[33] *See* Release No. 33-4666 (February 7, 1964) [29 FR 2490].

[34] *See* Release No. 33-4890 (December 20, 1967) [33 FR 507].

[35] *See* Release No. 33-4936 (December 9, 1968) [33 FR 18617].

[36] *See* Release No. 33-5274 (July 26, 1972) [37 FR 16005].

[37] *See* Report of the Industrial Issuers Advisory Committee to the Securities and Exchange Commission (December 22, 1972).

[38] *See* Advisory Committee.

[39] *See* Release No. 33-5447 (December 20, 1973) [39 FR 1511].

[40] *See* Release No. 33-5454 (February 7, 1974) [39 FR 8353].

[41] *Id. See also* Release No. 33-5511 (July 3, 1974) [39 FR 26720] adopting the proposed amendment.

[42] *See* Release No. 33-5274 (July 26, 1972) [37 FR 16005].

[43] *Id.*

[44] *See* Release Nos. 33-5279 (July 26, 1972) [37 FR 16010] and 33-5396 (June 1, 1973) [37 FR 17199].

(iii) *Report of the Industrial Issuers Advisory Committee.* The Industrial Issuers Advisory Committee was appointed by Chairman Casey in 1972 to review the application of the reporting and other paperwork requirements of the Commission to industrial issuers. The Industrial Issuers Report, published on December 22, 1972, recommended that the use of the guideline technique be extended to disclosure documents filed under the Exchange Act, specifically to registration statements on Form 10, proxy and information statements under Section 14 and annual reports on Form 10-K.[49]

In response to this recommendation, the Commission adopted the text of Securities Act Guide 22 [Summary of Earnings] as Exchange Act Guide 1 [Summary of Earnings][50] and the text of Guide 28 [Disclosure of Extractive Reserves and Natural Gas Supplies] as Exchange Act Guide 2.[51] The Commission also adopted Exchange Act Guide 4 [Integrated Reports to Shareholders], which permits registrants to integrate annual and quarterly shareholder reports in Forms 10-K and 10-Q under certain conditions.[52]

(iv) *Report of the Advisory Committee on Corporate Disclosure.*

The Advisory Committee was appointed by the Commission on February 2, 1976:

(1) "to identify the characteristics and functions of the present system of corporate disclosure and the role of the Commission within that system;

(2) to assess the costs of the present system of corporate disclosure and to weigh those costs against the benefits it produces;

(3) to articulate the objectives of a system of corporate disclosure and to measure the Commission's present disclosure policies against those objectives; [and]

(4) if necessary, to formulate recommendations to the Commission for adjustments to Commission policies to better effectuate those objectives."[53]

In addition to recommending the integration of the substantive disclosure requirements of the Securities Act and the Exchange Act and a "sunset" review of all existing rules and regulations, as discussed above, the Committee also recommended that the Commission encourage disclosure of "soft information," that is, disclosure of information concerning anticipated future company economic performance, planned capital expenditures and financing, management plans and objectives, dividend policies, and management capital structure policies.[54]

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[45] *See* Release No. 33-5278 (July 26, 1972) [37 FR 15985].

[46] *Id.*

[47] *See* Release Nos. 33-5279 (July 26, 1972) [37 FR 16010] and 33-5396 (June 1, 1973) [38 FR 17199].

[48] *See* Release No. 33-5278 (July 26, 1972) [37 FR 15985].

[49] *See* Report of the Industrial Issuers Advisory Committee to the Securities and Exchange Commission (December 22, 1972) at 16-19.

[50] *See* Release No. 33-5342 (December 18, 1972) [38 FR 1748] proposing Guide 1; Release Nos. 33-5443 (December 12, 1973) [39 FR 829] revising proposed Guide 1 and 33-5520 (August 14, 1974) [39 FR 31894] adopting Guide 1.

[51] *See* Release No. 33-5511 (July 3, 1974) [39 FR 26720]. In addition, when Securities Act Guides 61 [Statistical Disclosure by Banking Holding Companies] and 62 [Disclosure of Projections of Future Economic Performance] were adopted, Exchange Act counterparts of those Guides were adopted simultaneously. *See* Release Nos. 33-5735 (August 31, 1976) [41 FR 39007] and 33-5992 (November 7, 1978) [43 FR 53250], respectively.

[52] *See* Release No. 34-13639 (June 17, 1977) [42 FR 31780].

[53] *See* Advisory Committee at D-3.

The Commission, in response to that recommendation, authorized the publication of Securities Act Guide 62 and Exchange Act Guide 5 [Disclosure of Projections of Future Economic Performance] which encourage registrants to include projections of future economic performance in filings under the Securities Act and the Exchange Act.[55]

The Advisory Committee also endorsed the concept of industry guidelines, proposing that the Commission continue and expand the approach taken in adopting Guide 55, relating to interests in oil and gas programs, Guide 60, relating to preparation of registration statements for interests in real estate limited partnerships, and Guide 61, relating to statistical disclosure for bank holding companies.

The Committee noted that the use of industry guidelines minimizes the extent to which registrants would have to comply with inapplicable disclosure requirements, secures disclosure of vital importance to understanding a company in a particular industry, and provides the Commission staff with a ready reference to a particular industry.[56]

B. *Concept Release*

In order to initiate the "sunset" review of the Commission's outstanding rules and regulations recommended by the Advisory Committee,[57] the Commission issued an advance concept release on December 5, 1979[58], requesting commentator assistance in the reevaluation of the Guides. In that release, the Commission asked for comments upon the following issues: (i) whether or not the Guides were useful; (ii) whether or not certain Guides or provisions thereof should be deleted or revised; (iii) whether or not other disclosure requirements, particularly Regulation S-K, should be revised in conjunction with the revision of the Guides; and (iv) whether or not the Guides occasioned certain costs and other burdens. While a limited number of commentators responded to Release No. 33-6163,[59] the commentators who did respond discussed each of the issues raised in considerable detail, furnished comments with respect to specific guides as well[60], and proposed certain additional guides.

Most of the commentators agreed that the Guides have served a useful function in producing better disclosure and in saving time and money by publicizing the policies and practices of the Division of Corporation Finance. However, most of the commentators also agreed that the usefulness of the Guides has been offset by outdated information, lack of organization by subject matter and confusing and at times conflicting staff interpretations.

A primary focus of those who commented was the development of a workable system whereby disclosure requirements currently appearing throughout the rules, regulations, Guides and interpretative releases would be conformed and centralized in one location. The ultimate goal would be to have information with respect to common subject matter located in the same guide, rule, regulation or form.

Certain of the commentators urged the preservation of the guideline concept to the extent possible. Those commentators characterized the Guides as generally applicable, interpretative aids which can be applied flexibly to unique fact situations. Those commentators argued that transformation of the Guides into rules would necessitate multiple and complex exceptions and qualifications and stated further that those Guides which discuss staff approaches to filings should not be evaluated to the status of rules and regulations.

Most of the commentators, however, recommended that the substantive disclosure provisions of the Guides be codified after a notice and comment period. Those commentators expressed a clear preference for transforming the Guides into rules and regulations. In their opinion, the status of the Guides was ambiguous, for although the Guides technically do not have the legal effect of existing rules and regulations, the staff and the securities bar nevertheless apply them as though they did. The commentators observed that this uncertainty should be eliminated and recommended that any disclosure requirements should be fully set forth in the forms or regulations after appropriate notice and comment.

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[54] *See* Advisory Committee at 344-380.

[55] *See* Release No. 33-5992 (November 7, 1978) [43 FR 53250].

[56] *See* Advisory Committee at 340-342.

[57] *See* Advisory Committee at 328-342.

[58] *See* Release No. 33-6163 (December 5, 1979) [44 FR 72604].

[59] Letters from only twenty-one commentators were received: eleven law firms and associations, five corporations, three trade organizations and associations and two accounting firms. Copies of the letters of comments as well as the summary of these letters are available in the Commission's Public Reference Room, 1100 L St., N.W., Washington, D.C. File No. S7-813.

[60] Commentator reaction to certain Guides is briefly summarized below in the synopsis of proposals.

Those commentators who advocated incorporation of the Guides into the rules, regulations and forms generally agreed that substantive disclosure requirements should be codified in Regulation S-K, the control source of substantive regulation. The commentators, however, were divided in their recommended treatment of the procedural Guides, with some advocating the incorporation of such Guides into Regulation C or Regulation S-K and others advocating the retention of such Guides as guidelines. The commentators were similarly divided in their recommended treatment of the industry Guides, with some advocating the incorporation of such Guides into Regulation S-K and others advocating the retention of such Guides as guidelines.[61]

In order to clarify, conform, codify and centralize certain substantive and procedural provisions of the Guides, as suggested by the majority of the commentators, the Commission is proposing that, with the exception of the industry Guides, the Guides be withdrawn and relocated where appropriate, in Regulation S-K or in the procedural rules of the Securities Act and the Exchange Act. As discussed in detail below, the proposals would (i) retain the industry Guides in guideline form, to be re-evaluated periodically by separate notice and comment; (ii) relocate certain substantive disclosure provisions in Regulation S-K; and (iii) relocate certain procedural provisions in Regulation C and the General Rules under the Securities Act and the Exchange Act.

The Commission generally believes that disclosure requirements should be set forth in rules, forms and regulations. Guidelines, on the other hand, should pertain only to those areas, such as industry specific information, where more specific guidance is appropriate yet flexibility is necessary to tailor disclosures to particular facts and circumstances. Thus, the scope and detail of a particular Guide may not be appropriate to every registrant within the Guide's purview. If such Guides, particularly industry Guides, were codified as formal regulations, waiver procedures would also be necessary where the rule technically applied but where disclosure was neither necessary nor appropriate. The Commission expects that guidelines will relate primarily to disclosure by registrants in certain industries because, as observed by the Advisory Committee,[62] the use of industry guidelines minimizes the extent to which registrants must comply with inapplicable disclosure requirements, maximizes the quality of disclosure made with respect to particular industries, and provides the Commission staff with a frame of reference for examining filings by particular industries.

C. *New Proposals—Low Priced Issues*

As noted previously, certain commentators suggested the issuance of additional guidelines relating to procedural and substantive disclosure issues which generally affect a registrant. These commentators suggested that guidelines be issued with respect to disclosure which should be required with respect to u;nconventional distributions of securities, e.g., "block trades" or "spot" secondary offerings and first-time offerings which are initially priced below $5.00 per share.[63]

The proposal relating to first-time offerings recommended special provisions applicable where an issuer is not subject to reporting under the Exchange Act and is publicly offering securities for the first time. if such an issuer proposed to offer a security price at $5.00 or less per share, the issuer would be required to submit, at the time of filing the registration statement, a letter signed by the representative of the underwriters explaining the reasons for selecting such a low stock price[64] and undertaking, under certain circumstances, to furnish the staff with certain information relating to the purchasers of the securities. In particular, it was suggested that the underwriter should be required to furnish the staff with a list of the addresses, numbers of shares purchased and consideration paid or received by all purchasers if the offering price doubles during the three months after the date of the prospectus or if the offering price triples during the six months after the date of the prospectus.

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[61] Although the advance concept release asked commentators not to comment on the industry Guides, several did, noting that each industry Guide should be the subject of a separate notice and comment period.

[62] Advisory Committee at 340-342.

[63] The last concern reflects the recent increase in initial non-exempt public offerings.

For the reasons discussed above, the Commission believes that the resolution of questions relating to block trades and new or unconventional offerings in future guidelines is inappropriate. Specific comment, however, is requested as to whether the proposal on low-priced issues outlined above should be incorporated in the rules and regulations and, if so, where such requirements should be located.

D. *Table of Proposals*

The following table outlines the proposed revision of the Guides, showing the number and caption of each Guide, whether it is proposed to be eliminated altogether, and, if not, the proposed relocation of requirements of the Guid ein Regulation S-K, Regulation C or the General Rules under the Securities Act and the Exchange Act.

TABLE II

PROPOSED REVISION OF GUIDES

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in S-K	Reg. C	Other
1. Pre-Filing Conferences with Registrants				400A	
2. Letter of Comment	X				
3. Applicability of Amended Rules and Forms to Previously Filed Statements				401,432	
4. Registration of Securities for Delayed Offering				462A	
5. Preparation of Prospectuses			40,42,45		
6. Introductory Statements			41,42,45		
7. Dating of Prospectuses			40		
8. Pictorial or Graphic Representations in Prospectuses	X				
9. Promoters	X				
10. Registration of Options,	X				

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[64] It should be noted that paragraph (e)(2)(i) of proposed Item 45 [Description of Securities to be Registered] would provide that, where securities are being registered for the first time, the registrant must describe the various factors considered in determining the offering price.

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in S-K	Relocated in Reg. C	Other
Warrants or Rights and Other Securities Issued or Sold to Underwriters					
11. Finders			42		
12. Over-the-Counter Trading in Rights or Warrants			45		
13. Market Quotations - Absence of Established Market			45		
14. Underwriters' Compensation from Conversion of Funds into Foreign Currency			42		
15. Expenses of Issuance and Distribution			40		
16. Underwriters' Experience and Due Diligence Inquiry			42	400B	
17. Disclosure of Underwriting Discounts and Commissions			42	400B, 460, 461	
18. Original Issue Discount of Debt Securities			45		
19. Distribution of Preliminary Prospectus				460	15c2-8
20. Mailing of Amended Preliminary Prospectus to Regional Offices	X				
21. Use of Proceeds			43		
22. Summary of Earnings	X				
23. Current Financial Statements and Related Data	X				
24. Currencies in Which Amounts are to be Stated by Foreign Issuers	X				
25. Manner of Showing Distributions by Real Estate Syndicates and Real Estate Investment Trusts	X				

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in		
			S-K	Reg. C	Other
26. Statement of Dividend Policy	X				
27. Names of Customers and Competitors	X				
28. Disclosure of Extractive Reserves and Natural Gas Supplies	X				
29. Disclosure of Material Long-term Leases	X				
30. Disclosure of Principal Sources of Electric or Gas Revenues		X			
31. Disclosure of Recent Developments-Backlog	X				
32. Liability of Shareholders to Laborers, Servants or Employees under State Law			45		
33. Notice of Redemption of Convertible Securities or Callable Warrants			45		
34. Executive Committee	X				
35. Identification of Members of Board of Directors Selected by the Underwriters			42	460	
36. Effect of Issuance of Options or Warrants to Certain Persons			45		
37. Consents of Accountants	X				
38. Consents of Attorneys			51	435,436	
39. Charter Amendments Authorizing New Securities			45,51		
40. Underwriting Agreements	X				
41. Specimen Bond	X				

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in S-K	Relocated in Reg. C	Relocated in Other
42. Reports or Memoranda Concerning the Registrant				424A	
43. Representations from Selling Security Holders				461	
44. Securities Act Exemption for Shares Subject to Options	X				
45. Information as to Over-the-Counter-Market for Securities to be Registered				400B	
46. Statement as to Indemnification			48	460	
47. Enforceability of Civil Liabilities under the Act Against Foreign Persons			41		
48. Annual Reports to Security Holders			50		
49. Revision of Prospectuses Where a Company and its Employee Plan Have Different Fiscal Years				434E	
50. Disclosure of Confidential Material to Other Government Agencies				485	
51. Release of Price Data on Subscription Offerings by Listed Companies					135
52. Disclosure as to Listing on an Exchange			45		
53. Secondary Distributions "at the Market"			42	460	
54. Misleading Character of Certain Registrants' Names			40		

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in S-K	Reg C	Other
55. Prospectuses Relating to Interests in Oil and Gas Programs		X			
56. Interests of Counsel and Experts in the Registrant	X				
57. Registration Statements Relating to "Insurance Premium Funding" Programs		X			
58. Disclosure in Prospectus of Registrant's Business Address and Telephone Number			41		
59. Summary of Disclosure in the Prospectus			41		
60. Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships		X			
61. Statistical Disclosure by Bank Holding Companies		X			
62. Disclosure of Projections of Future Economic Performance			52		
63. Disclosure Relating to Management Remuneration by Certain Foreign Private Issuers			21		
Exchange Act Guides					
1. Summary of Operations	X				
2. Disclosure of Extractive Reserves and Natural Gas Supplies	X				
3. Statistical Disclosure by Bank Holding Companies		X			

Guide Number and Caption	Eliminated	Retained as a Guide	Relocated in		
			S-K	Reg. C	Other
4. Integrated Reports to Shareholders					Rule 0-10 under the Exchange Act
5. Disclosure of Projections of Future Economic Performance			52		

E. *Explanation of Proposals*

Guide 1—Pre-filing Conferences with Registrants.

Guide 1 describes the practice of the Division of Corporation Finance of holding its staff available for pre-filing conferences. The Guide does state, however, that a request for a pre-filing conference may be refused and that registrants should not attempt to use the conference as a means of having the staff draft language for filing.

In view of its procedural nature, the Commission is proposing that Guide 1 be deleted and recast as Rule 400A of Regulation C [Pre-Filing Conferences]. Proposed Rule 400A would state that registrants may request a pre-filing conference in order to discuss problems encountered in preparing the registration statement. In order to save both staff and registrants time, the rule would state that the request should be in writing, should outline the proposed subject matter, and should only be made when there are unusual or difficult disclosure issues. The rule would further indicate that pre-filing conferences are in the sole discretion of the staff and that the staff will not prepare materials for filing.

Guide 2—Letter of Comment

Guide 2 describes the circumstances under which a letter of comment will or will not be sent to a registrant. The Guide states that a letter is ordinarily sent when the disclosure does not meet existing requirements and may not be sent when an investigatory or stop order proceeding is deemed more appropriate.

The comment process has always been discretionary with the Commission staff. The Commission sees no need for a specific guide or rule in this area, particularly in light of the evolving nature of the review process with respect to Securities Act and Exchange Act filings. Accordingly, the Commission is recommending that Guide 2 be withdrawn.

Guide 3—Applicability of Amended Rules and Forms to Previously Filed Statements

Guide 3 refers to Rule 401 [Requirement as to Proper Form] and Rule 432 [Application of Amendments to Rules Governing Contents of Prospectuses]. Rule 401 provides that a registration statement shall be prepared in accordance with the form prescribed therefor as in effect on the date of filing. Rule 432 provides that a prospectus must conform to the rules in effect at the time the registration statement becomes effective unless a stop order has been in effect under Section 8(d) of the Securities Act. After a stop order is lifted, the prospectus must conform to the rules in effect on the date the stop order is lifted.

The first paragraph of Guide 3 states that the filing date referred to in Rule 401 is the initial filing date and, in the absence of specific provisions to the contrary in subsequent amendments to forms and rules, those subsequent amendments do not apply, even if the registration statement is amended. The second paragraph of Guide 3 indicates that the term "rules" as used in Rule 432 includes "forms."

The commentators generally stated that this Guide should be incorporated in Rules 401 and 432 and that any inconsistencies should be resolved. The Commission agrees and is proposing to delete Guide 3 and to codify the Guide's interpretation of Rules 401 and 432 in those Rules. Specifically, Rule 401 would be amended to refer to the initial date of filing, and Rule 432 would be amended to refer to the applicability of forms as well as rules in effect on the effective date of the registration statement.

Commentators have already noted the possible conflict between Rules 401 and 432, in that Rule 401 refers to the rules and forms in effect on the initial filing date to determine the proper form of the registration statement and pre-effective amendments while Rule 432 refers to the rules and forms in effect on the effective date to determine the form and contents of prospectuses. The Commission specifically solicits further comment on possible changes to clarify the interrelationship between these rules and Rule 470 [17 CFR 230.470] [Formal Requirements for Amendments] which pertains to the formal requirements for amendments to registration statements, other than delaying amendments.

Guide 4—Registration of Securities for Delayed Offering

The last sentence of Section 6(a) of the Securities Act provides: "A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered." [15 U.S.C. 77f(a)]. Guide 4 interprets that sentence to prohibit the registration of securities for a delayed or postponed offering, commonly referred to as "shelf" offering or registration. The Guide, however, cites several instances in which such registration is permitted, for example, where the registrant proposes to engage in a continuing acquisition program.

The majority of the commentators favored retaining the Guide, with substantial revision to reflect current staff policy on shelf registration. Two commentators, however, recommended the elimination of the Guide. One of those commentators argued that the concept of a shelf registration has been difficult to work with and would be unnecessary if expanded short forms of registration for seasoned "continuous reporting" registrants were made available; the other commentator asserted that the permissible categories of shelf registration are so broad as to render the Guide's interpretation of Section 6(a) almost meaningless.

The Commission is proposing that Guide 4 be withdrawn because: (1) it no longer reflects all current staff policies regarding shelf registrations; and (2) its interpretation of the last sentence of Section 6(a) may not, under certain circumstances, be necessary or appropriate for the protection of investors. The Commission is also proposing to replace Guide 4 with a new Rule 462A [Delayed or Continuous Offering and Sale of Securities], to be added to Regulation C, that would permit shelf registration for delayed and continuous offerings. The proposed rule would require compliance with certain conditions designed to insure that the registered securities are in fact proposed to be offered, that investors receive accurate and current information, and that the liability protections of the Securities Act apply to the information on which the investment decisions are based.

For the most part, the conditions in proposed Rule 462A are codifications of the current administrative practice. Accordingly, proposed Rule 462A would permit shelf registration for delayed offerings as currently described in Guide 4, with certain modifications discussed herein. The proposal would also allow registration for additional continuous offerings that comply with the conditions set forth in the proposed rule.[65]

This portion of the release discusses (1) Section 6(a) of the Securities Act and practice under Guide 4; (2) proposed Rule 462A; and (3) certain offerings that would be permitted under the proposal.

Section 6(a) of the Securities Act and Practice under Guide 4

In the absence of any specific legislative comment upon the meaning of the last sentence of Section 6(a) of the Securities Act, as enacted by Congress in 1933,[66] early opinions of the Commission and its staff interpreted the provision as requiring that a registration statement be effective only as to those securities proposed to be offered "in the proximate future," and this position is currently contained in Guide 4. This general prohibition against shelf registration was designed to effectuate the clear policy underlying the last sentence of Section 6(a) that "the registration statements and prospectuses on which they rely, so far as is reasonably possible, provide current information."[67] This interpretation was, in turn, premised upon the assumption that the registration of securities which are to be offered at "some remote future time" gives "the appearance of a registered status"[68] without providing its true substance—accurate and current information.

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[65] A seller making a continous offering covered by the proposed rule would intend to sell the securities within a reasonable period, but would not have decided upon the timing of the sales. The timing would ordinarily depend on market conditions, the financial needs of the seller, and other factors. Such an offering must be distinguished from the situation, not to be covered by the proposal, in which an offering lasts for a substantial time despite the intent to sell all the securities registered as soon as practicable after the effective date.

[66] *See* Hodes, "Shelf Registration: The Dilemma of the Securities and Exchange Commission," 49 Va. L. Rev. 1106, 1108-11 (1963).

In practice, the Commission has never adhered to such an absolute prohibition. Recognizing that the early interpretations were based in large part on concerns about the currency of information, the Commission and the staff developed, by changes in rules and practice, more effective means—particularly through post-effective amendments and undertakings—for updating and assuring the adequacy of disclosure. Because the statutory terminology, "proposed to be offered," has no specific time frame, it has been considered reasonable to take into account the availability of adequate information in administering agency policy with respect to shelf registration.[69]

Guide 4 itself (after stating the general rule against shelf registration) consists mainly of a description of situations in which shelf registration will be permitted. In fact, such registration has been permitted for several types of offerings not referred to in the guide. To date the staff has processed shelf registrations for the following:

(1) Offerings of securities which are to be issued in a continuing acquisition program, which are pledged by persons in control of the issuer, and which underlie options, warrants, rights or convertible securities (covered by Guide 4);

(2) secondary offerings made by persons who may be deemed to be statutory underwriters, and secondary offerings of securities received as underwriter compensation (covered by Guide 4);

(3) Continuous offerings of securities pursuant to a dividend or interest reinvestment plan or employee benefit plan (not covered by Guide 4);

(4) Continuous offerings of debt securities at fixed maturity dates, interest rates and other terms at the market on a best efforts basis (not covered by Guide 4).[70]

As a condition of allowing shelf registration under Guide 4 or otherwise, the staff has required undertakings to update information by post-effective amendment and to provide that the statutes of limitations contained in the Securities Act begin anew with the filing of each post-effective amendment.[71]

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[67] *In re Chiles Syndicate*, 10 S.E.C. 109, 113 (1941). *See* C. Israels *S.E.C. Problems of Controlling Stockholders and in Underwritigs* at 182, 205 (1962).

[68] *In re Combustion Corporation*, 3 S.E.C. 1062 1063 (1938).

[69] Congress has considered the issue of shelf registration on only two occasions. When, in 1941, several bills were introduced that were intended to permit shelf registrations under certain conditions, the administrative practice of utilizing post-effective amendments to keep such registrations current had not yet been developed. Ultimately, no action was taken on those proposals. *See* Hearings on Proposed Amendments to the Securities Act of 1933 and Securities Exchange Act of 1934 before the House Committee on Interstate and Foreign Commerce, 77th Cong., 1st Sess. 133, 315-17, 1402 (1941); Report of the Securities and Exchange Commission on Proposals for Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934, 77th Cong., 1st Sess. 2-3, 44 (1941); 1 Loss, *Securities Regulation* 198-99 (2d ed. 1961). Although a Senate report declared in 1954 that Section 6(a) "does not permit 'registration for the shelf'" (S. Rep. No. 1036, 83d Cong., 2d Sess. 10 (1954)), that statement was made in the context of congressional action amending the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] to codify the administrative practice whereby certain open-end management investment companies which had always engaged in continuous offerings were permitted to increase periodically the number of shares being registered on a single shelf registration statement. *See* Section 24(e) of the Investment Company Act. [15 U.S.C. 80a-24(e)]. In fact, on the same page of the report, the Senate expressly recognized the Commission's administrative practice "in appropriate cases" of allowing registrants to "renew" their registration statements by means of periodic amendments. The Commission is proposing that such administrative practices be codified into a Rule that will permit shelf registration only when adequate and current information is made available to investors by means of such post-effective amendments.

[70] *See* nn. 78, 86 and 87 *infra*.

After substantial experience with these types of shelf registration, the Commission is not aware of major abuses that have harmed investors. In addition, the integration of the Securities Act and Exchange Act disclosure systems provides an increasingly efficient basis for updating disclosure in securities offerings. Shelf registrations can utilize integration effectively, thereby facilitating the development of important new capital raising techniques. Accordingly, the Commission believes that a restrictive policy on shelf registration is not appropriate or necessary for the protection of investors. The Commission is proposing that Guide 4 be withdrawn and that its stated prohibition of shelf registration be replaced with proposed Rule 462A.

Proposed Rule 462A

Proposed Rule 462A provides that offerings meeting the conditions in the Rule would be deemed to satisfy the statutory provision that the registration statement shall register only securities that are "proposed to be offered." The essential conditions of the proposal are designed to assure: a bona fide intent to offer and sell, accurate current information, and liability protection under the Securities Act.

The first condition, that the securities registered are intended to be sold, is covered by subparagraph (a)(1) of the proposed rule. Subparagraph (a)(1)(i) sets out the general requirement that a registration statement for a continuous or delayed offering must pertain only to an amount of securities that can reasonably be expected to be offered and sold within two years from the effective date of the registration statement. The two year limitation would apply not to the actual sale of securities but to the reasonable expectations of the sellers at the time the initial registration statement is filed. If the amount of securities registered is reasonable at that time, and if there continues to be a reasonable expectation of sales, it would not be necessary to deregister shares remaining after two years, and then reregister them and pay another registration fee in order to offer and sell them, provided that the other conditions inproposed Rule 462A were met.[72]

Under current practice, in determining whether securities are "proposed to be offered" under Section 6(a), the staff uses its judgment in evaluating the reasonableness of the amount of securities registered in light of the purposes of the proposed offering.[73] That process would not change if the proposed Rule is adopted except insofar as it provides a definite two-year benchmark against which the reasonableness of the offering amount can be measured. The Commission has proposed two years as a standard because it has often been used by the staff in processing shelf registration statements and because it gives the seller a certain flexibility in making the offering while still complying with Section 6(a).[74]

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[71] *See* Undertaking A to Form S-7 (17 CFR 239.26), Undertaking B to Form S-8 (17 CFR 239.16b), Undertaking C to Form S-11 (17 CFR 239.18) and Undertaking A to Form S-16 (17 CFR 239.27). *See also* Item 13 of Proposed Form A, Item 15 of proposed Form B, and Item 16 of proposed Form C, [45 FR 63713, 63716, 63718].

[72] In this regard, subparagraph (a)(2)(iv) of the proposed Rule requires that the registration statement contain an undertaking to deregister by post-effective amendment any of the registered securities which remain unsold at the termination of the offering or as to which there is no longer a reasonable expectation of sale. *See* n. 80 and accompanying text *infra*.

[73] The Commission is aware that registrants prefer to over-estimate their needs because, under Rule 413 (17 CFR 230.413), additional securities of the same class cannot be added to a current registration statement for that class of securities. Instead, a new registration statement must be filed and declared effective. Section 24(e) of the Investment Company Act provides an exception to this rule for certain investment companies. Rule 413 would not be changed by the adoption of proposed Rule 462A.

[74] The two year standard would apply, for example, to securities registered for issuance in a continuing acquisition program and for sale in secondary offerings by persons other than the registrant, two categories of shelf registration specifically permitted by Guide 4. Security holders utilizing a shelf registration for a secondary offering are also affected by changes proposed herein with respect to existing Guides 43 and 53. *See* discussion of those Guides *infra*. The two year standard would also apply with respect to registration of securities received in connection with a public offering and proposed to be resold by underwriters and finders. Guides 4, 10 and 11 currently mandate immediate registration for these securities, but those requirements are proposed to be deleted as unnecessary. *See* discussion of Guides 10 and 11 *infra*.

Subparagraph (a)(1) sets out two additional specific categories of permissible shelf registrations. Subparagraph (a)(1)(ii) would permit shelf registration for securities that are reasonably expected to be offered and sold pursuant to dividend or interest reinvestment plans or employee benefit plans of the registrant. Although these offerings are not specifically allowed under Guide 4, they have long been permitted by the staff as continuous offerings, typically lasting for periods in excess of two years, and are generally registered on Forms S-16 or S-8.[75] Because these offerings are pursuant to a formal plan, it is reasonable to consider that the registration statement pertains to securities that are proposed to be offered, for purposes of Section 6(a), provided the amount registered is consistent with the anticipated operation of the plan. The Commission sees no need to interfere with these traditional forms of continuous offerings that have presented no abuses or detriment to investors simply because they continue for a duration of more than two years. The Commission also solicits comments on whether there are other type sof formal plans that are similar in operation and purpose to dividend or interest reinvestment plans or employee benefit plans and should be included in subparagraph (a)(1)(ii).

Subparagraph (a)(1)(iii) would apply to offerings of securities which (1) are the subject of options, warrants or rights which are, or will within the next two years be, exercisable, (2) are issuable upon the conversion of other securities, if such securities are also registered on the effective date, or (3) are pledged as collateral. In these situations, the securities registered are proposed to be offered in that the prospective seller has already given to others the legal right to purchase (or, in the case of pledges, sell) the securities under certain items and conditions. This two year rule with respect to securities to be offered pursuant to options, warrants or rights is consistent with subparagraph (a)(1)(i).[76] As to convertible securities which are registered, the right to convert into the underlying security is an integral part of the initial offering of the convertible securities.[77] As to pledged securities, sales could occur at any time upon default. This subparagraph of the proposal is a codification of Guide 4 and existing practice.

The Commission is aware that there can be no precise measure of a bona fide intent to offer securities in the foreseeable future, and it specifically solicits comments upon the appropriateness of using a two-year period.[78] As previously discussed,[79] the proposed Rule sets no outer limits upon the duration of an offering once the standards set forth in subparagraph (a)(1) are met. Under the proposal, securities which reasonably could have been expected to be offered for sale within two years may continue to be offered even though two years have elapsed since the effective date of the initial registration statement. Proposed Rule 462A would, however, require that the registration statement contain an undertaking to deregister by post-effective amendment any of the registered securities which remain unsold at the termination of the offering or as to which there is no longer a reasonable expectation of sale.[80] The Commission recognizes that circumstances may change over the course of an offering so that one of the essential conditions to use of a shelf registration—a bona fide intent to offer the securities registered—may no longer be met. If this occurs—be it within one year or three years from the initial effective date of the registration statement—the registrant would be required to deregister the remaining unsold securities.

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[75] Qualified registrants may register securities to be offered pursuant to an employee benefit plan upon Form S-8. The General Instructions to that Form provide that Form S-8 is not available for resales or reoffers of such securities by affiliates of the registrant. Those persons may, however, reoffer or resell such securities pursuant to a separate prospectus prepared in accordance with Form S-16 and filed with the initial registration statement on Form S-8, if the registrant is eligible to use Form S-7 and if certain limitations are put upon the amounts of securities to be reoffered or resold within given time periods. *See* General Instruction E to Form S-8. In addition, those selling shareholders must have an intent to make such reoffers or resales within not more than sixteen months following the effective date of the prospectus. *See* Notes 1 and 2 to General Instruction E. If proposed Rule 462A is adopted, the Commission intends to amend that portion of Form S-8 to bring it into conformity with the registration for all secondary offerings as set out in subsection (a)(1)(i) of the proposed Rule. Accordingly, affiliates would be able to register those shares that they intend to offer and sell within two years of the effective date of the registration statement.

[76] However, securities offered pursuant to options under employee benefit plans may be registered under subparagraph (a)(1)(ii) without regard to the two-year period.

[77] It should be noted that, if options, warrants or rights are immediately exercisable or if convertible securities are immediately convertible, the underlying securities must be registered along with the registration of the options, warrants or rights or the convertible securities. This position as to convertible securities is set forth in Guide 4 and would not be changed by the elimination of the Guide. However, the actual conversion of convertible securities without payment of additional consideration, whether or not the securities are convertible immediately upon issuance, may be exempt from registration under Section 3(a)(9) of the Securities Act, provided the securities obtained on conversion are "exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange."

The Commission solicits comments on whether the Rule should include a specific outer limit upon the duration of a shelf offering or whether the undertaking to deregister plus the undertaking to provide current information set forth in subparagraph (a)(2)[81] are sufficient to insure that the statutory purposes of Section 6(a) are met.

Subparagraphs (a)(2)(i) and (ii) of proposed Rule 462A set forth the second essential condition for use of shelf registration—that investors receive adequate current information. These provisions require that the registrant undertake to file post-effective amendments (or, with the permission of the Commission, prospectuses under Rule 424(c) [17 CFR 230.424(c)] [Filing of Prospectuses—Number of Copies]) whenever required to include any information necessary in order that the registration statement not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein not misleading as of any time during the offering. While this undertaking is not required in currently effective registration forms,[82] the staff generally requires that post-effective amendments be filed to reflect material changes, and the Commission believes it should be specifically mandated in a Rule permitting delayed or continuous offerings which may last for a substantial period of time. In addition, as currently required by registration forms, the registrant must undertake to file as a post-effective amendment any prospectus required by Section 10(a)(3) of the Securities Act.[83] The Commission solicits comment upon whether these undertakings, standing alone, are sufficient to insure that investors receive current and accurate information.

Subparagraph (a)(2)(iii) sets forth the third essential condition for shelf registrations—that the liability protections of the Securities Act apply to the current information included in post-effective amendments. Specifically, the registration statement must include an undertaking to clarify that, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Similarly, it is contemplated that a Section 15(d) registrant would be required to comply with the periodic reports requirements of Section 15(d) fo one year subsequent to the date of effectiveness of a post-effective amendment.

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[78] The Commission is also aware that, in at least one instance, the staff has limited the availability of a shelf registration for a continuous offering of debt to that which the registrant proposed to sell in one year. *See* Release No. 33-6240 (September 17, 1980) [45 FR 61609]. *See* n. 87 *infra.*

[79] *See* n. 72 and accompanying text *supra.*

[80] Proposed Rule 462A (a)(2)(iv).

[81] *See* n. 82 and accompanying text *infra.*

[82] *See* n. 71 *supra.* However, the Commission staff obtains various forms of additional undertakings in connection with certain specific types of shelf registrations and will continue to require any undertakings deemed appropriate in a particular case. *See, e.g.*, letter to Beatrice Foods Co., 1973 (CCH) Fed. Sec. L. Rep. para. 79,351 (available January 17, 1973).

[83] Section 10(a)(3) of the Act requires that "when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense . . ."

Current registration forms (see n. 71 *supra*) specify that post-effective amendments with Section 10(a)(3) prospectuses must comply with forms, rules and regulations in effect on the dates such amendments are filed. *See* discussion of Guide 3 *supra.*

Notwithstanding the requirements of subparagraph (a)(2) of proposed Rule 462A, there are certain situations in which post-effective amendments (or prospectuses under Rule 424(c)) are not necessary. Accordingly, the Rule contains an instruction which permits a registrant not to file a post-effective amendment if the registration statement is on Form A[84] and if all information that would have been contained in the post-effective amendment as required by subparagraph (a)(2) ahs already been set forth in periodic reports filed by the registrant pursuant to Section 12 or Section 15(d) of the Exchange Act and is incorporated by reference in the registration statement. The Commission believes that the disclosure of other material information by post-effective amendment, as required by subparagraph (a)(2) of the proposed Rule, can be eliminated when that information has already received widespread dissemination by means of the registrant's periodic reports and updates information included in the prospectus solely by incorporation by reference. This theory underlies the Commission's development of an integrated disclosure system and is incorporated into the proposed three-tier registration system. As proposed, this instruction in Rule 462A would apply only to registration statements filed on Form A.[85]

However, a post-effective amendment (or prospectus under Rule 424(c)) would still be required if the information actually included in the prospectus and delivered to investors contained a material misstatement of fact or failed to state a material fact necessary to make such information not misleadingas of any time during the offering. In determining whenther the prospectus is materially inaccurate, registrants and selling security holders should consider whether substantive disclosures in the prospectus have been rendered misleading by subsequent events. For example, even if quarterly financial results are incorporated in the registration statement and prospectus by reference, if financial information has actually been included in the prospectus being delivered, it may be misleading to continue to deliver the prospectus without amending it to include the current data.

The Commission further believes that, if financial information is included in a prospectus, the prospectus must be updated to reflect comparable information when new information is required by Section 10(a)(3).

In addition, the registrant and selling securities holders should consider whether all facts set forth about the seller's particular plan of distribution in the initial registration statement. The Commission, therefore, wishes to emphasize that any alteration made in the terms of the offering or plan of distribution—for example, a change from an underwriting at the market on a "best efforts" basis to any variety of "firm commitment" underwriting, or a change of managing underwriter in a "firm commitment" deal—would always necessitate the filing of a post-effective amendment.[86] Even an issuer registering securities on proposed Form A and incorporating by reference into the registration statement all periodic reports generally would have to file a post-effective amendment because information about the plan of distribution for a particular offering of securities would ordinarily not appear in those periodic reports.

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[84] The Commission has proposed to create a new three-tier registration system to facilitate the integration of filing made under the Securities Act and Exchange Act. *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693]. Proposed Form A is designed to be used by the same qualified issuers and for virtually the same primary and secondary offerings as are permitted on existing Form S-16. It requires minimal prospectus disclosure and relies heavily, through incorporation by reference, on Exchange Act periodic reports. If proposed Rule 462A is adopted, Form A would be amended to cover registration of offerings allowed by the proposed Rule. The provisions of proposed Forms B (Instruction 9) and C (Instruction G) which refer to Guide 4 would also be amended to refer to proposed Rule 462A.

[85] See Release No. 33-6235 (September 2, 1980 [45 FR 63693, 63701].

[86] The Commission is aware that the plan of distribution for certain forms of delayed or continuous offerings will not ordinarily change and, therefore, can be adequately disclosed well in advance of the actual transactions. In those situations, a post-effective amendment describing the terms of the offering would not be necessary. For example, shares are purchased through a dividend or interest reinvestment plan at a price set in accordance with a predetermined formula. Similarly, a continuous offering of securities made

It should be noted that proposed Rule 462A does not apply to registration statements filed by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] because that statute specifically provides for continuous registration of investment company securities in Section 24 [15 U.S.C. 80a-24]. In addition, the Commission has recently published a release setting forth a staff interpretive position permitting a foreign government to use a shelf registration for an offering of debt securities upon terms and conditions not identical to those contained in proposed Rule 462A.[87] The Commission solicits comments on whether foreign governments or political subdivisions thereof, whose prospectuses must meet the requirements of Section 10(a)(2) of the Securities Act, should be subject to different requirements for the use of shelf registrations.

Certain Offerings Permitted by Proposed Rule 462A

In addition to permitting delayed offerings, proposed Rule 462A would broaden the category of permissible shelf registrations to make clear that issuers may register equity and debt securities for a continuous offering "at-the-market" or otherwise. The Commission recognizes that, although such an offering would be permissible under the Securities Act if the conditions contained in proposed Rule 462A were to be met, a continuous offering by an issuer of its equity securities "at the market," without formal underwriting arrangements, represents a novel method of issuer entrance into the market place and may raise issues under the antimanipulative provisions of the Exchange Act, specifically Rules 10b-2, 10b-6 and 10b-7.[88] It would be necessary for participants in a continuous distribution of securities to limit their market purchases of the class of securities being offered (or rights to acquire or securities convertible into that class) in a manner consistent with those anti-manipulative rules. In addition, the nature and timing of selling efforts in connection with an issuer's continuous offering of equity securities at the market might have an impact on trading in those securities and could possibly have effects on orderly market processes.

In view of the novel market concerns that may arise in connection with permitting an issuer to offer its securities in the manner contemplated by proposed Rule 462A, the Commission specifically solicits comment on (1) whether and to what extent there is a potential for manipulation in connection with issuer sales in an "at-the-market" offering; (2) whether and to what extent any such manipulative potential would differ from that with respect to market transactions not involving the issuer; (3) whether any potential concerns could be adequately dealt with by disclusure of the plan of distribution

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Footnote 86 continued

directly into the market on an episodic basis at the market price would require no further description if the agents for sale and the proposed method of sale are fully described in the initial regisration statement. The Commission would expect to allow the registrant to "sticker" its prospectus under Rule 424(c), rather than file a post-effective amendment, to reflect the addition or deletion of a particular broker/dealer as a member of the syndicate in a firm commitment offering or an agent in a "best efforts" offering if the plan of distribution otherwise remained the same. The staff has also processed registration statements for several offerings of debt securities at specific interest rates, maturities and other terms that could be sold, without post-effective amendment, by the company or its disclosed agents whenever market conditions were right for such offerings. *See, e.g.*, Ford Motor Credit Company (File No. 2-4112) and Credithrift Financial, Inc. (File No. 2-59882). In such debt offerings, changes limited to interest rates were permitted to be disclosed and filed by means of a prospectus under Rule 424(c), and the Commission would expect to continue to allow similar changes to be disclosed and filed in that manner, rather than by post-effective amendment.

[87] *See* Release No. 33-6240 (September 17, 1980) [45 FR 61609]. In particular, the staff imposed certain additional prospectus-delivery requirements upon the registrant. *See also* n. 78 *supra*.

[88] 17 CFR 240.10b-2, 240.10b-6 and 240.10b-7.

and any resulting market overhang;[89] (4) whether and what limitation, if any, should be imposed on at-the-market offerings on the basis of outstanding value or float in the market for the securities; and (5) whether and what conditions, if any, should be imposed upon the timing and amounts of sales in an at the market offering.[90]

In addition, the Commission invites suggestions as to additional conditions that would be appropriate for use of shelf registration of equity securities to be sold at-the-market. For example, the Commission is considering whether it should limit such offerings to certain issuers which exceed the requirements for use of proposed Form A and in which the securities are sold by or through a broker-dealer, or a limited, named group as agent(s) or principal(s).

Guide 5-Preparation of Prospectuses

Guide 5 lists the subject matter which should appear on the cover page of a prospectus and in the notes to the distribution table on the cover pate, focusing particularly upon treatment of underwriter compensation, material risks associated with the offering and pricing information with respect to first-time issues.

With one exception, the commentators we[illegible] in favor of retaining Guide 5, but removing redundant or unnecessary notes. One writer particularly requirested that the definition of underwriter compensation conform to the definition of such compensation used by the National Association of Securities Dealers, Inc., ("NASD"). Another suggested that the Guide be eliminated in view of the abbreviated disclosure now allowed in Forms S-7 and S-16 or, alternatively, be translated into a new cover page rule in Regulation C. This writer stressed that, if the Guide or its substance were retained, it should be applicable only to a first-time offering of securities on a long-form registration statement.

In light of the disclosure which is elicited by Guide 5, the Commission is proposing to delete the Guide and to incorporate most of its requirements in Regulation S-K.[90] The Commission believes that cover page requirements should be centralized, and that such requirements should be viewed as substantive disclosure requirements, not as procedural requirements of the type included in Regulation C. Further, the Commission believes that certain of the cover page information required by this Guide is relevant with respect to all registrants, not simply first-time issuers. For example, every prospectus should contain a distribution table which shows the per unit and total offering price to the public, underwriting discounts and commission, and proceeds to the registrant or other persons

The Commission, therefore, is proposing the adoption of Item 40 of Regulation S-K [Cover Page of the Prospectus] which would combine the distribution table which would be required by Item 1 of proposed Form A with respect to any offering[91] and Item 3 of proposed Form B with respect to a best efforts offering.[92] While much of the subject matter of Guide 5 is covered by the distribution table requirements in proposed Forms A and B, certain additional information required by Guide 5 would also be included in proposed Item 40, that is (i) the name of the registrant; (ii) the amount and a brief description of the securities offered; (iii) the required statement that the Commission has neither aproved nor disapproved the securities;[93] (iv) if applicable, identification of material risks involved in the purchase of the securities;[94] (v) the date of the prospectus[95]; (vi) and any material required by state law.

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[89] Proposed Items 42 and 45 of Regulation S-K would require disclosure as to the plan of distribution and material effects of market overhang. *See* discussion of Guides 6 and 53 *infra*.

[90] For example, restrictions on sales could be modeled after the restrictions on issuer purchases in proposed Rule 13e-2. *See* Release No. 34-17222 (October 17, 1980) [45 FR 70890].

[90] Certain provisions of Guide 5 are proposed to be eliminated as unnecessary, including instructions encouraging brevity and readability and discouraging use of stock phrases and "bare bones" disclosure.

[91] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63710].

[92] *Id.* at 63715.

[93] Also required by Rule 425 [Statement Required in All Prospectuses] [17 CFR 230.425] which is proposed to be rescinded.

Since disclosure of the various forms of underwriter compensation is material with respect to any offering, the Commission further proposes that the brief description of "the discounts and commissions to be allowed or paid to underwriters" required by the note to paragraph (d) of Guide 5 be added to proposed Item 42 of Regulation S-K [Plan of Distribution]. Such information would be included in the body of the prospectus to the extent not set forth on the cover page. At the suggestion of one commentator, the Guide 5 directive to describe the forms of underwriter compensation would be elaborated by setting forth examples of the forms of underwriter compensation deemed reportable. Such examples are drawn from the Corporate Financing Interpretation of the NASD and from Guides 15 and 35.[96] It is anticipated that these examples would be updated to reflect changes in the NASD's Corporate Financing Interpretation.

Finally, in view of the significance of the disclosure required by Guide 5 with respect to first-time issues, the Commission is recommending that the notes to Guide 5 which call for disclosure of the absence of an established trading market and the method of determining the offering price of first-time issues be added to proposed Item 45 of Regulation S-K [Securities to be registered].

As discussed further in connection with Guide 59, the Commission is requesting comment on what information should be set forth on the cover page, in the summary and elsewhere in the prospectus.

Guide 6-Introductory Statements

Guide 6 sets forth certain items which should be disclosed immediately following the cover page: risk factors and a graphic illustration of the dilution of shareholder equity.

The commentators on Guide 6 generally felt that the Guide elicited extremely useful information. In fact, one commentator suggested that the Guide be expanded to require a first-time issuer to describe the effect of any anticipated market overhang. Only one commentator expressed the view that the Guide should be eliminated because discussions of risk factors and dilution have become "trivialized" and "boilerplate." All of the commentators, however, were strongly opposed to making mandatory a graphic presentation of the dilution of a new investor's equity.

The Commission agrees with the majority of the comentators that a discussion of risk factors consititutes a material disclosure item and, accordingly, proposes that such requirement be added to proposed Item 41 of Regulation S-K [Summary of Information].[97] A tabular presentation of any material dilution of the interests of new equity investors or existing security holders has already been proposed as a summary requirement in proposed Forms A, B and C. That requirement would not mandate the particular form in which such dilution should be presented, so long as an "appropriate"tabular form is used.[98] In addition, the following disclosure requirements from Guide 6 are proposed to be added to item 42 of Regulation S-K [Plan of Distribution]. Where there is substantial disparity between the public offering price and the effective cash cost to insiders, the registrant would be required to disclose the net tangible book value per share before and after the distribution; the amount of increase in such net tangible book value per share attributable to all cash payments made by purchasers of the shares being offered; and the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

The Commission is also proposing, in response to the commentator suggestion noted previously, that a requirement be added to proposed Item 45 [Securities to be Registered], requiring the registrant to furnish a description of any material impact or potential impact (including dilution and market overhang), upon security holders, upon the registrant and upon the market for registrant's securities, which may result from (i) options from, warrants for or securities convertible into securities of the same class as those being registered, (ii) outstanding securities of the same class as those being registered held by affiliates or consituting restricted securities (for the purpose of Rule 144 [17 CFR 230.144]), or (iii) securities being registered for delayed or continuous distribution, or securities of the same class being offered pursuant to an effective registration statement.

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[94] The proposals would codify existing staff practice by requiring that the identification of material risks be printed in bold-face type.

[95] Also required by Guide 7.

[96] *See* discussion of Guide 14 and 35 *infra*.

[97] *See* discussion of Guide 59 *infra*.

[98] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63710].

The proposed rule would call for disclosure of information on potential dilution not only from rights issued to persons related to the registrant but also from rights issued to others. Further, although there are no specific current requirements on disclosure of market overhang, such disclosure has often been deemed material and included in registration statements. The proposed rule would call for information on the potential dilution and market impact of securities of the same class which may be offered in the future or are currently being offered by the registrant, by its affiliates, or by other persons who hold amounts of restricted securities and who may sell under Rule 144 or upon registration. The third requirement of the proposed rule would apply to registration of delayed or continuous offerings under proposed Rule 462A and would elicit information that is particularly relevant to the market impact of a continuous-at-the-market offering by an issuer of its equity securities.[99]

Guide 7-Dating of Prospectuses

Guide 7 provides that the date of the prospectus required by Rules 423 [Date of Prospectus] [17 CFR 230.423] and 433 [Prospectus of Use Prior to Effective Date] [17 CFR 230.433] should be set forth on the cover page of the prospectus. Rule 423 provides generally that each prospectus used after the effective date of the registration statement should be dated approximately as of the effective date and that each prospectus supplement should be dated as of the approximate date of issuance. Rule 433 in paragraph (b) provides, *inter alia*, that each preliminary prospectus used before the effective date of the registration statement should be dated on the cover page as of the approximated date of issuance.

As discussed above in connection with Guide 5, the Commission is proposing that this dating requirement be included in proposed Item 40 of Regulation S-K [Cover Page of the Prospectus] and is therefore proposing to withdraw Guide 7.

Guide 8-Pictorial or Graphic Representation in Prospectuses

Guide 8 provides that drawings are not permitted in a prospectus, although photograhs and/or trademarks may be permitted so long as they do not create a misleading impression.

Since this Guide draws an artificial distincition between drawings and photographs, the Commission proposes that it be eliminated altogether. Registrants, however, should be aware of their continuing obligation not to use misleading or potentially misleading maps, surveys, drawings, photographs, trademarks and other graphic representations.

Guide 9-Promoters

Guide 9 states that persons coming within the definition of "promoters" in Rule 405 may also be referred to as "founders" or "organizers" [Definitions of Terms] [17 CFR 230.405]. Since the definition of "promoter" in Rule 405 describes promoters in terms of their founding and organizing activities, in the Commission's view the use of the terms "founder" or "orgainizes" is tantamount to the use of the term "promoter." Since the Guide appears to be unnecessary, the Commission accordingly proposes its elimination. Specific comment is requested, however, as to whether it is desirable to amend Rule 405 to permit explicitly the alternative terminology.

Guide 10-Registration of Options, Warrants or Rights and Other Securities issued or Sold to Underwriters

Guide 10 requires that all transferable options, warrants, rights and covertible securities, and the securities to be issued upon the exercise or conversion thereof, issues or sold to underwriters in connection with a registered public offering are to be considered a part of that offering and registered accordingly, regardless of whether the underwriter takes with a view to distribution. Non-transferable option, warrants or rights issued in the offering need not be registered as part of the offering, but the securities subject thereto must be. The Guide also equires the registrant to undertake to file an updated post-effective amendment with respect to the secondary offering of such securities where the securities are not to be distributed immediately.

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[99] See discussion of Guide 4 *supra*.

The commentators believed that this guide unnecessarily requires registration of securities which are not being distributed, and that, in appropriate circumstances, underwriters should be able to resell the securities in the future pursuant to an available exemption,[100] or to register the securities at a future time if an exemption is not available. In light of these views and the proposal to adopt Rule 462A regarding delayed or continuous offerings[101] the Commission is proposing to withdraw Guide 10. Registration of securities issued to underwriters would then not be mandated in all cases, but only if the securities are in fact being publicly distributed.

Underwriters must continue to avoid engaging in unregistered public distributions of securities received by them. In the event that securities issued by underwriters are deemed to be part of the distribution, proposed Rule 462A would enable underwriters to register options, warrants, rights and convertible securities, and the underlying securities, that are received in connection with an offering at the time of the offering, provided that the registration statement contains certain undertakings to provide updated infromation with respect to delayed offering by post-effective amendment or by incorporation by reference of periodic reports. Further, as noted in connection with Guide 4,[102] the proposed deletion of Guide 10 does not obviate the necessity of registering the securities which are immediately exercisable at the time such option, warrants, rights or convertible securities are themselves registered.

Guide 11-Finders

Guide 11 states that the cover page of the prospectus should, in addition to disclosing any finder's fee in the distribution table, identify any finder and disclose the nature of any affiliation of the finder to the registrant, its officers, directors, promoters, principal stockholders and underwriters (including in each case, affiliates or associates thereof). Guide 11 also states that if a finder receives securities as compensation for services rendered in connection with the offering, the finder may be deemed a statutory underwriter whose shares must be registered pursuant to Guide 10.

The Commission is proposing deletion of the guide, but continuation of certain of its requirements. While the Commission believes that disclosure of a finder's affiliation should appear in the prospectus, it is proposed that such disclosure not be required on the cover page. Finder's fees and similar payments would still be required to be disclosed in the distribution table on the cover page of the prospectus,[103] but the disclosure required by Guide 11 with respect to the finder's affiliations would be added to the Plan of Distribution section of the prospectus. In view of the significance of a promoter's, as well as a finder's, affiliation to the registrant, its officers, directors, principal stockholders, underwriters and finder(s), or promoter(s) (or their affiliates or associates), as the case may be, proposed Item 42 of Regulation S-K [Plan of Distribution] would also codify the current staff practice of requiring disclosure in the prospectus of such affiliation(s) of the promoter.

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[100] Rule 144 establishes a safe harbor for the open market resale of restricted securities without registration if all the conditions of the Rule are met. In general, the Rule imposes a two year holding period and sets limitations upon the amount of securities that can be sold within a given time period. Rule 144 cannot be used directly by an underwriter because underwriters do not meet the requirement that their securities be acquired in a transaction or chain of transactions not involving any public offering. *See* Securities Act Release No. 6099 (August 2, 1979) [44 FR 467527]. The staff nevertheless allows underwriters to use the standards of Rule 144, provided that: (1) the securities to be sold were registered originally as part of the public offering; and (2) at least two years have elapsed from the date of the last sale of that public offering. *See e.g.*, letter re Communications Properties, Inc., dated March 13, 1978. If the Guide's mandatory requirement for registration is eliminated, the staff would be inclined not to apply proviso (1) as a condition to use of Rule 144 by underwriters with respect to sale of securities obtained in connection with a public offering.

[101] See discussion of Guide 4 *supra*.

[102] *See* n. 76 *supra*.

[103] See Item 1 of proposed Form A in Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63710], incorporated in proposed Item 40 of Regulation S-K.

With respect to treatment of finders as statutory underwriters commentators expressed views similar to those expressed concerning Guide 10. In view of these comments and the proposed adoption of Rule 462A, the Commission is proposing the withdrawal of the mandatory registration requirement for securities issued to finders. As with securities issued to underwriters, registration may be required for securities which are issued to finders and are intended to be offered to the public. In such cases, proposed Rule 462A may be available, provided that the conditions specified by that Rule are satisfied.

Guide 12-Over-The-Counter Trading in Rights or Warrants

Guide 12 states that disclosure should be made in the prospectus of the basis upon which subscription rights or warrants will be traded in the over-the-counter market. The Guide cites Section 61 of the NASD's Uniform Practice Code, stating that, pursuant to that Section, quotations will be based on the assumption that one right or one warrant represents the right to purchase one share of stock although several rights may be necessary to purchase one share.

Since this guide provides useful market information concerning the securities to be registered, the Commission is recommending that it be deleted and the proposed Item 45 of Regulation S-K [Securities to be Registered] require that if warrants, options or rights are geing registered the basis of trading in such securities should be stated. A description of the basis of trading in such securities would include a statement, where applicable, that such rights trade separately from other securities and that such rights are quoted on the basis of a single right, even though several rights may be necessary to purchase on share. The Commission believes that the information currently elicited by the Guide should be expanded to take into account the basis of trading in options and rights, as well as subscription rights and warrants, and that a description of the basis of trading should include a statement as to whether such rights will be traded separately. (Exchange traded options would not be covered by the disclosure requirement.)

Guide 13-Market Quotations-Absence of Established Market

Guide 13 sets forth the disclosure which should appear in a prospectus where there is an established market for the securities to be registered and where there is no established market. Guide 13 also states that the existence of limited or sporadic quotations should not of itself be deemed to constitute an established trading market.

In accordance with the commentators' suggestion that this Guide be incorporated in Regulation S-K, with revision to reflect recent changes in market practices, the Commission is proposing that the Guide be deleted and that the following disclosure concerning market and market price of the securities being registered be required by proposed Item 45 of Regulation S-K [Securities to be Registered]: (i) if there is no market for the securities being registered (excluding limited or sporadic quotations), a statement should be furnished to that effect; (ii) if there is an established market for such securities, the principal market or markets on which such securities are traded should be identified; and (iii0 in the case of listed securities, historical market price data on a quarterly basis for a two year period should be set forth as reported in the consolidated transaction system, or if not so reported, as reported by each principal exchange; and (iv) in the case of quoted securities, historical market price data on a quarterly basis together with an explanation of the source and basis for such quotations should be set forth.

The disclosure called for by Guide 13 would therefore be added to proposed Item 45 with only one modification. To reflect the institution of the consolidated transaction system, Item 45 would require that historical market price data for listed securities should be based, whenever possible, upon prices reported by the consolidated transaction system.[104]

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[104] This updated reporting requirement tracks the requirements for reporting historical market price data for the registrant's common stock which were recently adopted in Item 9 [proposed herein to be renumbered Item 30] of Regulation S-K [Market Price of the Registrant's Common Stock and Related Security Holder Matters]. *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630].

Guide 14-Underwriters' Compensation From Conversion of Funds into Foreign Currency

Guide 14 provides that where an underwriter sells securities for U.S. currency but remits the proceeds to the issuer in foreign currency, any material profit made by the underwriter form exchange rate fluctuations should be disclosed in the prospectus as underwriter compensation.

In order to provide guidance as to the forms of underwriter compensation which should be described in the prospectus, the Commission is proposing that reference to any material amount of profit realized from coversion of offering proceeds into foreign currency be included in proposed Item 42 of Regulation S-K [Plan of Distribution] as a form of reportable underwriter compensation. The Guide itself is proposed to be deleted.

Guide 15-Expenses of Issuance and Distribution

Guide 15 provides that the itemized statement of "other expenses of issuance and distribution" called for in Part II of a registration statement should break out any premium paid by the registrant of selling security holder on any policy wich insures or indemnifies directors or officers against any liabilities they may incur in connection with the offering. Guide 15 also states that the total of such expenses should be set forth in a note to the net proceeds column of the distribution table on the cover page of the prospectus.

The first directive of Guide 15—that the premium paid for liability insurance or idemnification should be separately itemized—is already set forth in an instruction to Item 9 of proposed Form A.[105]

In accordance with one commentator's suggestion, however, specific comment is requested as to whether an increasee in the amount of such premiums resulting from the offering should also be itemized separately.

The Commission proposes that the second directive of Guide 15—that aggregate "other expenses of issuance and distribution" be reported in a note to the net proceeds column of the distribution table, with the aggregate of such expenses borne by the registrant and by selling security holders shown separately—be added to proposed Item 40 of Regulation S-K [Cover Page of the Prospectus] as an instruction to the distribution table. Guide 15 itself is proposed to be deleted.

Guide 16)—Underwriter's Experience and Due Diligence Inquiry

The first paragraph of Guide 16 discusses the more detailed disclosure called for in a prospectus relating to a "new or speculative" issue if the underwriter is newly organized, reactivated or recently registered as a broker-dealer, especially if the principal function of the underwriter will be to sell the securities to be registered, or if the underwriter is identified with the promoters of the registrant. The second paragraph of Guide 16 states that the underwriter of a "new or speculative" issue may be called upon to explain to the staff on a supplemental basis the steps taken to verify the disclosure in the prospectus.

The commentators felt that this Guide should be retained, but revised to apply only to managing or sole underwriters of original public offering or speculative issues. The Commission proposed to delete this Guide and to retain its substance elsewhere (without a limitation as to managing underwriters).

Congruent with past practice, in view of the critical role played by the underwriter as the intermediary between the issuer and the investing public in affording protection against defects in the prospectus, the Commission is proposing that the text of the first paragraph of Guide 16 be included in proposed Item 42 of Regulation S-K [Plan of Distribution]. In view of Item 3(a) of proposed Form A, which would require disclosure of any material relationship between the underwriter and the issuer,[106] specific comment is requested as to whether these disclosure provisions should be combined and expande to require identification of any underwriter which has a material relationship with promoters, finders and affiliates of the reigistrant itself.

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[105] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63713], incorporated in proposed Item 46 of Regulation S-K. *See* also instruction to Item 9 of Form S-16.

[106] *See* Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63711].

The Commission is also proposing that new Rule 400 B [Supplemental Information] incorporate the remainder of Guide 16 and state that the staff may request supplemental information relating to the due diligence inquiry of the underwriters of a "new or speculative issue."

Guide 17—Disclosure of Underwriting Discounts and Commissions

Guide 17 discusses the need to disclose fully in the prospectus all forms of underwriter compensation which are not easily reducible to a dollar per unit basis, for example, options or warrants to purchase shares, expense allowances, continuing fees for services, and first refusal on future financing. Guide 17 also requires the registrant, before the effective date of the registration statement, to notify the Commission as to whether or not the amount of compensation to be allowed or paid to the underwriters has been cleared with the NASD.

As discussed above in connection with Guide 5, the Commission is proposing that proposed Item 42 of Regulation S-K [Plan of Distribution] require the registrant to describe briefly the forms of compensation to be allowed or paid to the underwriters. At the suggestion of one commentator, that Item would list possible forms of underwriter compensation based upon the NASD's Corporated Financing Interpretation.

The Commission proposed (i) to add the requirement of Guide 17 that a registrant automatically inform the staff when the amount of underwriter compensation has been cleared with the NASD to Rule 401 [Request for Acceleration of Effective Date] [17 CFR 230.461]; and (ii) add a paragraph to the Note to Rule 460 [Preparation and Distribution of Preliminary Prospectus] to the effect that the staff may require a copy of the NASD clearance as a condition to acceleration.

The Commission recently approved certain proposed rule changes of the National Association of Securities Dealers, Inc. (the "NASD") that pertain to underwriting practices in fixed price offerings.[107] One of the rule changes amended Article III, Section 24 of the NASD's Rules of Fair Practice so as to allow underwriters and other dealers to recieve selling concessions for the sale of underwritten securities to their customers in return for research they provided to those customers. As a result, investors who received research in connection with their purchases in a fixed price offering would receive more or at least different value than those who did not. In approving that rule change, the Commission did not address the question of what disclosure, if any, of practices permitted by NASD rule is or should be required.[108] In light of the NASD's rules, as now amended, the Commission requests that commentators address the question of whether generic or other disclosure should be made to investors concerning anticipated distribution and research practices under the NASD's rules.

Guide 18—Original Issue Discount of Debt Securities

Guide 18 provides that when debt securities are offered at a discount, the discount and the tax treatment thereof under Section 1232 of the Internal Revenue Code should be disclosed in the prospectus.

In order to provide comprehensive market price information with respect to the securities being registered, the Commission is proposing that Guide 18 be deleted and the substance of its provisions added to proposed Item 45 of Regulation S-K [Securities to be Registered]. The proposed wording is changed from the Guide to make clear that disclosure is required only if there is "original issue discount" subject to special tax rules under Section 1232. Accordingly, if debt securities are to be offered at an original issue discount as defined in Section 1232 or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, a registrant would be required to disclose the amount of such an original issue discount and any tax effects thereof pursuant to Section 1232.

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[107] See Release No. 34-17371 (December 12, 1980) [45 FR].

[108] *Id. But* see the dissenting opinion of Commissioner Evans.

Guide 19—Distribution of Preliminary Prospectus

Guide 19 outlines the information which a registrant must furnish the staff with respect to the the extent of distribution of the preliminary prospectus to enable the staff to rule upon requests for acceleration. The Guide notes that the staff may require broader distribution as a condition to acceleration and that the distribution of the preliminary prospectus is not ordinarily a condition of acceleration in the case of subscription offerings.

The majority of the commentators believed that compliance with Guide 19 did not impose an excessive burden because an adequate distribution of the preliminary prospectus affords the market sufficient time and opportunity to appraise information disseminated about the issuer. The commentators further believed that the rules and guidelines governing the distribution of preliminary prospectuses (Rule 15c2-8, Rule 460, Guide 19 and Release No. 33-4968) sould be consolidated.

In accordance with these commentator views, the Commission is proposing deletion of Guide 19, and incorporation of its requirements into Rule 460 [Preparation and Distribution of Preliminary Prospectus] of Regulation C and the incorporation of the "48-hour rule" of Release No. 33-4968[109] into Rule 15c2-8 [Delivery of Prospectus] [17 CFR 240.15c2-8] under the Exchange Act. Rule 460 would be amended in two respects. First, proposed Rule 460(e) would specify that a distribution of the preliminary prospectus may not be necessary in the case of certain subscription rights offerings. Second, proposed Rule 460 (g) would permit the staff to request certain information with respect to the distribution of the preliminary prospectus as a condition to acceleration. This information includes the dates of distribution; the number of prospective underwriters and dealers to whom the preliminary prospectus was furnished; the number of prospectuses so distributed and the number of prospectuses distributed to others, identifying them in general terms. While the proposals substantially reflect Guide 19, certain changes would be made. These include: (i) the registrant would supply distribution information only upon request from the staff, rather than automatically, whenever a request for acceleration is made; (ii) the approximate rather than exact dates of distribution would be given in the case of large offerings where, as pointed out by the commentators, it may be difficult to pinpoint exact distribution dates; and (iii) the registrant may be called upon to explain the steps taken by the underwriters and dealers to comply with the provisions of Rule 15c2-8 under the Exchange Act [Delivery of the Prospectus].

The proposal would alleviate the regulatory burden imposed by the requirement that every issuer supply a "Guide 19" letter in connection with every offering since "Guide 19" information is frequently unnecessar in offerings by experienced issuers and underwriters.

In accordance with the commentators' suggestion that distribution requirements be consolidated, Rule 15c2-8, which sets forth the specific steps which participating brokers or dealers must follow to distribute the preliminary prospectus reasonably, is proposed to be amended to incorporate the "48-hour rule" of Release No. 33-4968. A new paragraph (b) would be added to Rule 15c2-8, providing that, in connection with a new or speculative issue of securities, participating brokers or dealers must distribute a copy of the preliminary prospectus to each person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation. Although the "48 hour" rule may be an appropriate standard for issues which are not new or speculative, Release No. 33-4968 was directed to new and speculative issues, and the proposed rule change is likewise limited. The Commission requests comment on whether the "48 hour" rule should be applied as a mandatory requirement for issues other than those discussed in Release No. 33-4968.

Guide 20—Mailing of Amended Preliminary Prospectus to Regional Offices

Guide 20 provides that unmarked copies of the preliminary prospectus contained in an material amendment to a registration statement should be sent to the Chicago and New York regional offices of the Commission.

The Commission, concurring with the commentators that the mailing of material amendments to the regional offices serves no useful purpose at present, proposes that this Guide be eliminated.

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[109] See Release No. 33-4968 (April 24, 1969) [34 FR 7235].

Guide 21—Use of Proceeds

The first paragraph of Guide 21 indicates that, in an S-1 prospectus, management may reserve the right to change the use of proceeds only if all contingencies are adequately disclosed. The second paragraph of the Guide requires the registrant to use a pie-chart, table or some other graphic illustration of the intended use of proceeds.

In order to provide guidance with respect to adequate disclosure of the intended use of proceeds, the Commission is proposing that Guide 21 be withdrawn and that the first paragraph of the Guide be added as an istruction to proposed Item 43 of Regulation S-K [Use cf Proceeds to Registrant]. In addition, the Commission is proposing an instruction requiring use of proceeds disclosure for all proceeds of an offering which is made both in the United States and abroad.

The Commission is also recommending that mandated "pie-chart" disclosure of use of proceeds be eliminated because such disclosure may not be necessary or appropriate and, as pointed out by the commentators, the inclusion of a pie-chart may involve unwarranted printing costs. However, pie charts and similar graphic disclosures will continue to be permitted or encouraged where appropriate.

Guide 22—Summary of Earnings

Guide 22 and Exchange Act Guide 1 were recently withdrawn when the Commission adopted Item 11 (proposed herein to be renumbered Item 12) of Regulation S-K [Management's Discussion and Analysis of Financial Condition and Results of Operations].[110]

Guide 23—Current Financial Statements and Related Data

Guide 23 was recently withdraws when the instructions to financial statements were centralized in Regulation S-X.[111]

Guide 24—Currencies in which Amounts are to be Stated by Foreign Issuers

Guide 24 provides that a foreign issuer may state money amounts solely in the currency of its domicile, unless a second parallel statement in U.S. dollars is necessary to a clear understanding. The Guide also states that the foreign issuer should prominently disclose the exchange rate as of the latest practicable date.

Since the subject matter of Guide 24 has been superseded by a more recent statement of Commission policy in Staff Accounting Bulletin ("SAB") No. 1,[112] the Commission is proposing the elimination of this Guide. SAB 1 states that current staff practice is to require statements in U.S. as well as foreign currency, with the exchange rate given as of the date of the most recent balance sheet. If a material change in the exchange rate has occurred since the balance sheet date, the Bulletin instructs the foreign registrant to give the exchange rate at or about the date of filing. However, it should be noted that this matter is presently being reconsidered by the staff, and the Commission anticipates proposing a rule on the subject in the near future.

Guide 25—Manner of Showing Distributions by Real Estate Syndicates and Real Estate Investment Trusts

Guide 25 provides that real estate syndicates and real estate investment trusts should not express distributions in percentages where, as is usually the case, the distribution includes both investment income and return of capital, because the percentages would then indicate a rate of return in excess of that based on investment income. Rather, the Guide requires that such distributions be broken down to show separately the investment income and return of capital components. The Guide also states that such data should be computed on the basis of financial accounting standards rather than the basis used for income tax purposes, if different.

The Commission is proposing the elimination of Guide 25 because it has been superseded by Item 6(b)(3) of Form S-11 [Summary of Operations].

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[110] *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630].

[111] *See* Release No. 33-6234 (September 2, 1980) [45 FR 63682].

[112] *See* Staff Accounting Bulletin Release No. 1 (November 4, 1975) [40 FR 53557], as amended.

Guide 26—Statement of Dividend Policy

Guide 26 was withdrawn when the Commission adopted Item 9 (proposed herein to be renumbered Item 30) of Regulation S-K [Market Price of the Registrant's Common Stock and Related Security Holder Matters].[113] However, the Commission believes that certain aspects of the disclosure under present Item 9 applicable to registrant's common stock should also apply to securities being registered.

The Commission is proposing that the requirements of Item 9 as they relate to the frequency and amount of dividends paid, restrictions on the registrant's present or future ability to pay such dividends and the registrant's policy with respect to payment of future dividends be added to proposed Item 45 of Regulation S-K [Securities to be Registered] in the section setting forth disclosure requirements with respect to capital stock to be registered.

The Commission sepcifically requests comment on whether and to what extent the disclosure requirements in existing Item 9 (proposed herein to be renumbered Item 30) of Regulation S-K pertaining to common stock and proposed Item 45 of Regulation S-K pertaining to securities to be registered can be harmonized and made uniform, for example, as to dividends and market for the securities.[114]

Guide 27—Names of Customers and Competitors

Guide 27 states that, although a registrant is usually not required by Form S-1 to disclose the names of its customers and competitors in describing its business, where a substantial part of the business is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, that customer or customers should be identified, and material facts with respect ot them should be stated. The Guide also warns that identification of customers and competitors should be avoided if the effect of including specific names would be misleading.

The Commission is proposing the elimination of Guide 27 because it has been superseded by paragraphs (c)(vii) and (x) of Item 1 of Regulation S-K [Description of Business].

Guide 28—Disclosure of Extractive Reserves and Natural Gas Supplies

Guide 28 and Exchange Act Guide 2 contain detailed instructions as to how registrants should disclose the quantitative amount of their estimated reserves and the current availability of gas supplies.

The Commission proposes the elimination of Guide 28 and Exchange Act Guide 2 because they hve been superseded by Item 2(b) of Regulation S-K [Description of Property].

Guide 29—Disclosure of Material Long-term Leases

Guide 29 states that a registrant, in describing any property held under a material long-term lease, should give the remaining term of years of the lease.

The Commission is proposing the elimination of this Guide because it has been superseded by Financial Accounting Standards Board Statement No. 13 on leases.

Guide 30—Disclosure of Principal Sources of Electric or Gas Revenues

Guide 30 instructs registrants which are electric or gas utilities to disclose the principal classes of service from which electric or gas revenues are derived.

The Commission is recommending that Guide 30 be retained as an industry guide. Other aspects of disclosure by utility companies are discussed in Release No. 33-6529[115] which was recently issued as the result of a separate notice and comment process.

Guide 31—Disclosure of Recent Developments—Backlog

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[113] *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630].

[114] *See also* discussion of Guide 12 *supra* and Guide 32 *infra*.

[115] *See* Release No. 33-6259 (November 13, 1980) [45 FR 76695].

Guide 31 states in the first paragraph that if there has been a material change in the trend of sales or earnings of the registrant, the reason for the change should be adequately disclosed. Guide 31 also states in the second paragraph that, where material to the business of the registrant, information concerning backlog and levels of plant operation should also be given. The Guide goes into some detail as to the manner in which backlog should be disclosed.

The Commission proposes that this Guide be eliminated because the first paragraph relating to disclosure of material changes in sales or earnings trends has been superseded by recently adopted Item 11 (proposed herein to be renumbered Item 12) of Regulation S-K [Management's Discusseion and Analysis of Financial Condition and Results of Operations][116] and the second paragraph relating to disclosure of material backlog has been superseded by paragraph (c)(viii) of Item 1 of Regulation S-K [Description of Business].

Guide 32—Liability of Shareholders to Laborers, Servants or Employees under State Law

Guide 32 requires diclosure of potential libilities imposed on shareholders by state labor laws, unless the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

The Commission is proposing that this guide be withdrawn and its substance added to proposed Item 45 of Regulation S-K [Description of Securities to be Registered] under section (a) of that Item which calls for a description of the rights evidenced by capital stock to be registered, as well as any qualifications or limitations upon those rights.

Guide 33—Notice of Redemption of Convertible Securities or Callable Warrants

Guide 33 provides that, with respect to convertible securities which are subject to redemption and stock purchase warrants which are callable, the registrant should: (i) state whether the right to convert of purchase will be lost unless it is exercised before the redemption or call; (ii) state the kinds, frequency and timing of the notice of redemption or call, including the cities or newspapers in which notice will be published; and (iii) in the case of bearer securities, caution investors to make appropriate arrangements to prevent loss of the right to convert or purchase in the event of redemption by, for example, reading newspapers in which the notice of redemption or call may be published.

Since the manner in which a registrant intends to redeem or call covertible securities or stock purchase warrants constitutes a material term of such securities which should be described in the prospectus, the Commission proposes to withdraw Guide 33 but to add its disclosure requirements to proposed Item 45 of Regulation S-K [Description of Securities to be Registered] under section (c) of that Item which calls for a description of the rights evidenced by warrants, rights and convertible securities, as well as an qualifications or limitations upon those rights.

Guide 34—Executive Committee

Guide 34 provides that the members of the registrant's executive committee should be disclosed in Form S-1. The Commission is proposing the elimination of this Guide because it has been superseded by Item 3 (proposed herein to be renumbered Item 20) of Regulation S-K [Directors and Executive Officers].

Guide 35—Identification of Members of Board of Directors Selected by the Underwriters

Guide 35 states that the Commission may refuse to accelerate the effective date of a registration statement if a director to be designated by the underwriter has not been so designated but when designated may be a director, officer, partner, employee or affiliate of the underwriter. If the person to be designated is not yet known and will not be affiliated with the underwriter, the prospectus should contain a representation to that effect. The Commission proposes to withdraw Guide 35 but to retain its substance in other rules and regulations.

In order to provide guidance as to the various forms of underwriter compensation which should be described in the prospectus, the Commission is proposing that Item 42 of Regulation S-K [Plan of Distribution] which describes reportable underwriter compensation include requirements that the registrant describe any arrangement whereby the underwriter has chosen or will choose a member or members of the board of directors, identify any director so designated, and state whether the designee is related to the underwriter. In addition, the Commission is proposing to codify the condition of acceleration contained in Guide 35 by adding it to the list of conditions contained in the Note to Rule 46 [Preparation and Distribution of Preliminary Prospectus] [17 CFR 230.460].

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[116] *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630].

Guide 36—Effect of Issuance of Opations or Warrants to Certain Persons

Guide 36 outlines the additional disclosure which should appear in a prospectus whenever a material amount of options, warrants or convertible securities have been or are to be issued to promoters, underwriters, finders, principal stockholders, officers or directors. Such disclosure would ordinarily include the following: that for the life of the options, warrants or convertible securities, the holders thereof are given, at a minimal cost, the opportunity to profit from a rise in the market for securities of the class subject thereto, with a resulting dilution in the interest of security holders; that the terms on which the issuer would obtain additional capital during that period may be adversely affected; and that the holder of such securities might be expected to exercise them at a time when the issuer would, in all likelihood, be able to obtain any needed capital by a new offering of securities on terms more favorable than those provided for by the options or warrants.

As noted above in connection with Guide 6, the Commission is proposing that Item 45 of Regulation S-K [Description of Securities to be Registered] require a registrant to describe any material effect(s) upon security holders, upon the registrant, and upon the market for the registrant's securities which may result from options for, warrants for or securities convertible into, the securities of the same class as those being registered As the instruction to proposed Item 45(e)(1)(v) makes clear, the description of such material effects would ordinarily include the potential dilution as described in Guide 36. Accordingly, the Commission proposes that Guide 36 be withdrawn.

Guide 37—Consents of Accountants

Guide 37 provides that the accountants' consent should be included in any registration statement which refers to the examination or review by the accountants of material contained in the registration statement.

The Commission proposes that Guide 37 be eliminated because accountants' consents are already required by Section 7 of the Securities Act and by Rule 436(b) of Regulation C [Consents Required in Special Cases] [17 CFR 230.436(b)].

Guide 38—Consents of Attorneys

Guide 38 provides that, where a registration statement requires as an exhibit an opinion of counsel as to the legality of the issue, or any attorney is named as having passed on the legality of the issue, or where any information continued in the registration statement is to be furnished upon the authority of an attorney, the written consent of such counsel must be filed with the registration statement. However, Guide 38 also provides that no consent will be required from an attorney named as counsel for the underwriters or selling shareholders or from an attorney whose opinion was relied upon by another attorney in formulating the latter's own opinion.

Since, in the opinion of the commentators and the Commission, neither Section 7 of the Securities Act nor Rules 435 and 436 of Regulation C specifically discuss the filing of attorney consents, the Commission is proposing: (i) elimination of Guide 38; (ii) amendment of Item 7 (proposed herein to be renumbered Item 51) of Regulation S-K [Exhibits][117] to require that consents of experts and a list thereof be filed as exhibits to the registration statement; (iii) amendment of Rule 435 [Formal Requirements as to Consents] [17 CFR 230.435] to refer to opinions as well as reports of experts; and (iv) amendment of Rule 436 to state that, where an attorney is named as having acted for the underwriters or selling security holders, no consent will be required by reason of his being named as having acted in such capacity and, where the opinion of one attorney relies upon the opinion of another attorney, the consent of the attorney whose opinion is relied upon need not be furnished although he is named as an expert. The Commission specifically requests comment on whether a consent should be obtained from an attorney whose opinion is relied on by another attorney in connection with rendering an opinion on the legality of the issue, and the relying attorney is named and furnishes a consent.

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[117] Recently adopted in Release No. 33-6230 (August 27, 1980) [45 FR 58822].

Guide 39—Charter Amendments Authorizing New Securities

Guide 39 provides that, in cases where a new issue of securities requires an amendment to the articles of incorporation authorizing the new shares and it is not possible to file the amendment with the appropriate state authority prior to the effective date of the registration statement, the registrant may file a copy of the proposed form of amendment, and, if material change are later made, must also file the changed copy. Guide 39 adds that the prospectus should contain disclosure of the fact that the securities are being offered before the charter amendment has become effective pursuant to state authority.

The Commission is proposing that this Guide be withdraws and that paragraph (b)(3) of Item 7 (proposed herein to be renumbered Item 51) of Regulation S-K [Exhibits][118] be revised to provide that a form of charter amendment may be filed as an exhibit where it is impracticable for the registrant to file such amendment with the appropriate state authority prior to the effective date of the registration statement, and that, if material changes are made after the copy is filed, the registrant must also file a changed copy. The Commission is also proposing that the disclosure requirement of Guide 39 be added to proposed Item 45 of Regulation S-K [Description of Securities to be Registered] to state that, where the securities being registered are to be offered before the charter amendment authorizing the issuance of such securities is made effective by the appropriate state authority, a statement to that effect should be furnished.

Guide 40—Underwriting Agreements

This Guide allows a registrant to file as an exhibit to its registration statement the form of underwriting agreement instead of the final executed copy. The Guide does require, however, that the form filed be a complete copy of the contract as it will be finally executed.

The Commission is proposing elimination of this Guide since the provisions thereof are now covered by paragraph (b)(1) of Item 7 (proposed herein to be renumbered Item 51) of Regulation S-K [Exhibits].[119]

Guide 41—Specimen Bond

Guide 41 provides that, if a specimen bond is not available to be filed as an exhibit, the registrant may instead refer in the exhibit list to the pages of the indenture where the text of the bond is set forth.

In view of the Commission's recent decision no longer to require that specimen certificates be filed as exhibits,[120] the Commission is proposing the elimination of Guide 41.

Guide 42—Reports or Memoranda Concerning the Registrant

Guide 42 states that a registrant should furnish the staff with certain supplemental information prior to any pre-filing conference or, if none, at the time of filing the registration statement or as soon as practicable thereafter.

Paragraph 1(a) of the Guide requires registrants who do not meet the conditions for use of Form S-7 to furnish the staff with any reports or memoranda (including those for internal use) prepared within the past twelve months for or by the registrant, a principal security holder or a principal underwriter. All registrants must furnish pursuant to paragraph 1(c) of the Guide any reports or memoranda prepared for external use by the registrant or a principal underwriter in connection with the proposed offering. All registrants proposing a reclassification of securities, merger, consolidation, acquisition of assets, exchange offer, tender offer or similar transaction must furnish pursuant to paragraph 1(d) of the Guide any reports or memoranda prepared by or for any of the parties to the transaction. Paragraph 2 of the Guide requires information about the use or distribution of any reports or memoranda furnished under the Guide.

Although the six commentators addressing this Guide objected to its continued use, in the experience of the staff the supplementary information furnished pursuant to Guide 42 has proved valuable in measuring the adequacy and accuracy of disclosure contained in the registration statement. In view of the value of such reports and memoranda and in view of the Commission's recent re-evaluation of the Guide's provisions[121], it is proposed that the Guide be withdrawn and recast as new Rule 424A [Reports or Memoranda Concerning the Registrant] with only technical, non-substantive changes.

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[118] Recently adopted in Release No. 33-6230 (August 27, 1980) [45 FR 58822].

[119] Recently adopted in Release No. 33-6230 (August 27, 1980) [45 FR 58822].

[120] *Id.*

Specific comment is requested as to whether registrants should continue to furnish such reports or memoranda as supplemental information with respect to every registration statement or whether proposed Rule 424A should be revised to require such information only with respect to the registration of securities in connection with certain types of transactions, such as going private, initial public offerings, mergers, tender offers or other complicated transactions.

Guide 43—Representations From Selling Security Holders

Guide 43 requires each selling security holder in a secondary offering to furnish the staff with a letter including a statement of the reason(s) for the sale; a representation that the seller is familiar with the registration statement; and any material adverse information which is known to the seller but is not disclosed in the prospectus (or a representation that the seller knows of no such information).

The Commission proposes to delete Guide 43, in agreement with the conclusion of the majority of the commentators that this Guide should be eliminated because it elicits "boilerplate" representations and creates costly mechanical problems whenever there is a large number of selling security holders. This proposal should not be construed, however, to obviate the obligation of the selling security holder to insure that material adverse information is adequately disclosed in the prospectus. A selling security holder must still submit a request for acceleration under Rule 461 [Request for Acceleration of Effective Date] [17 CFR 230.461] and, under an amendment to that Rule proposed herein, an acceleration request by a selling security holder (or the registrant or managing underwriter) would be deemed an acknowledgement of that person's responsibilities under the Securities Act.

Guide 44—Securities Act Exemption for Shares Subject to Options

Guide 44 requires any registrant which has an employee stock option plan but which has not registered the securities underlying that plan, at the time of filing a new registraton statement relating to securities of the same class of securities covered by the plan, to advise supplementally whether the securities covered are to be registered. If registration is not contemplated, the registrant is required to furnish information indicating the exemption from registration relied upon and the pertinent facts concerning transactions and participants under the plan.

The Commission does not believe it is necessary as a general matter to require suplemental information on exemptions from registration for employee stock options (although, of course, it may request such information if curcumstances indicate a reason to do so). Accordingly, Guide 44 is proposed to be withdrawn.

Proposed Item 49 of Regulation S-K [Recent Sales of Unregistered Securities] would require disclosure of unregistered sales of securities over the past three years, including unregistered sales pursuant to employee stock option plans.

Guide 45—Information as to Over-the-Counter Market for Securities to be Registered

Guide 45 provides that an issuer registering securities for which there is an over-the-counter market should furnish the staff with supplemental information as to the number of holders of record and the aggregate number of shares held of record by persons other than directors, officers and principal shareholders (with holdings in street or nominee name stated separately), the aggregate number of shares transferred during the past six months, and the most active market-makers during the past six months.

The Commission does not believe these detailed requirements are necessary in all cases, and that a more flexible approach is appropriate. Accordingly, Guide 45 is proposed to be withdrawn.

Instead of requiring registrants of over-the-counter securities to supploy the staff with supplemental information whenever such securities are registered, the Commission proposes to state in new Rule 400B [Supplemental Information] that the staff, in considering requests for acceleration may request supplemental information, including, but not limited to, information relating to recent market activity in the securities to be registered. It should also be noted that pursuant to existing paragraph (e) of the Note to Rule 460, the Commission may deny a request for acceleration where there have been transactions in securities of the registrant by persons connected withor proposed to be connected with the offering which may have artificially affected or may artificially affect the market price of the securities to be offered.

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[121] *See* Release No. 33-5929 (May 5, 1978) [43 FR 53250].

Guide 46—Statement as to Indemnification

Guide 46 discusses the disclosure concerning indemnification which a registrant should make in its prospectus. Paragraph (a) pertains to provisions for indemnification of officers, directors and controlling persons of the registrant. It provides that, if Note (a) to Rule 460 [Preparation and Distribution of Preliminary Prospectus] [17 CFR 230.460] does not apply because the registrant is not requesting aceleration pursuant to Rule 461 [Requests for Acceleration of Effective Date of Registration Statements] [17 CFR 230.461], and waivers have not been obtained from directors, officers, or controlling persons against liabilities arising under the Securities Act, provisions for indemnifying such persons should be referenced in the prospectus. A statement should also be made in the prospectus that, in the opinion of the Commission, such indemnification provisions are agains public policy and therefore unenforceable. If Note (a) to Rule 460 does apply because the registrant is requesting acceleration pursuant to Rule 461, the Note requires either waivers from the indemnified persons or a brief description of the indemnification provisions in the registration statement, together with a statement that, in the opinion of the Commission, such provisions are unenforceable and an undertaking to submit to a court of appropriate jurisdiction the question of whether such provisions are enforceable. Guide 46 makes clear that if Note (a) applies, the waiver or disclosure and undertaking required thereby need not be made in the prospectus and may appear in Part II of the registration statement.

Paragraph (b) of Guide 46 provides that provisions for indemnification of underwriters and their controlling persons should be described in the prospectus and referenced on the cover page. Paragraph (c) states that insurance against liabilities arising under the Securities Act will not prevent acceleration under Note (a) to Rule 460, and no waivers or undertakings are necessary.

The Commission proposes to delete Guide 46 and to incorporate equivalent provisions in Note (a) to Rule 460 and proposed Item 48 of Regulation S-K [Indemnification of Directors and Officers].

The Commission is proposing that Note (a) to Rule 460 be amended by adding a statement, based on paragraph (c) of Guide 46, that, in any event, insurance against liabilities will not be considered a bar to acceleration. Paragraph (a) of proposed Item 48 of Regulation S-K (as derived from Item 11 of proposed Form A[122]) already requires a registrant to disclose in Part II of the registration statement the general effect of any charter provisions, by-laws, contract, arrangement or statute under which any director or officer of the registrant is indemnified or insured against any liability such person may incur in his capacity as such. This requirement would include any indemnification for liability under the Securities Act (as now called for by paragraph (a) of Guide 46). Paragraphs (b) and (c) would be added to Item 48 to require disclosure in Part II of the registration statement with respect to indemnification by the registrant for Securities Act liability of controlling persons of the registrant (as now called for by paragraph (b) of Guide 46). Paragraph (d) would also be added to Item 48 to provide that, in cases where Note (a) to Rule 460 does not apply because acceleration has not been requested, the registrant should describe in the prospectus any provisions indemnifying its directors, officers or controlling persons against Securities Act liability and should state that, in the opinion of the Commission, such provisions are unenforceable (based on paragraph (a) of Guide 46).

The principal effect of these proposals is to codify Guide 46 in proposed Item 48 of Regulation S-K and in Rule 460, except that provisions in the underwriting agreement for indemnification by the registrant of underwriters (and their controlling persons) agains liabilities under the Securities Act would ordinarily be described in Part II of the registrations statement rather than in the prospectus. The Commission has proposed this change because there seems to be little reason to require prospectus disclosure of idemnification provisions as to underwriters but not directors, officers and controlling persons of the regisrant.

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[122] See Release No. 38-6235 (September 2, 1980) [45 FR 63693, 63713].

Guide 47—Enforceability of Civil Liabilities under the Act Against Foreign Persons

Guide 47 provides that a foreign private registrant should disclose in the forepart of the prospectus how investors may enforce civil liabilities arising under the Securities Act against the registrant, its directors and officers, and underwriters and experts in connection with the offering if such persons or the assets of the registrant are located outside the United States, e.g., whether or not service of process can be effected outside the United States and whether or not judgements will be enforced by foreign courts.

The Commission is proposing to delete Guide 47 and add the substance of its dsclosure requirements to proposed Item 41 of Regulation S-K [Summary Information].

Guide 48—Annual Report to Security Holders

Guide 48 applies to registrants which do not have to send their annual repors, including certified financial statements, to shareholders pursuant to laws or regulations administered by the Commission or pursuant to a listing agreement with a national securities exchange. Under the Guide, such registrants must disclose in the prospectus whether or not the reports will be furninshed, whether or not those reports will contain certified financial statements, and the nature and frequency of other reports to be issued by the registrant.

The Commission proposes to delete Guide 48 and include similar disclosure requirements in Regulation S-K [Availability of Information Relating to the Registrant] would require that registrants subject to the filing requirements of Section 15(d) of the Exchange Act describe briefly the nature and frequency of reports which will be made to the purchasers of the securities being registered, indicating whether or not such reports will contain certified financial information.

Specific comment is requested as to whether the requirements proposed in Forms A, B and C with respect to the availability of information relating to registrants using those Forms should also be consolidated in proposed Item 50.[123]

Guide 49—Revision of Prospectuses Where a Company and its Employee Plan Have Different Fiscal Years

Guide 49 provides that, in cases where securities are registered under the Securities Act for offering pursuant to an employee stock purchase, savings or similar plan, and the interests in the plan constitute a separate securities, such interests must also be registered and the financial statements of the plan included in the prospectus. Where the company and plan have different fiscal year-ends, the prospectus must contain up-to-date information with respect to the company and the plan.

The Commission is proposing that Guide 49 be deleted, and that its substance be set forth in a new proposed Rule 434E [Revision of Prospectuses Where a Company and its Employee Plan Have Different Fiscal Years]. The reminder in Guide 49 that registrants may be required to register interests in the plan has already been incorporated in recently revised Form S-8[124] as General Instruction (1)(b). The directive that the prospectus contain up-to-date financial information with respect to the plan, as well as the regisrant, is unnecessary in Form S-8 since that Form, as recently revised, incorporates by reference the periodic reports of the plan and the registrant. The Commission specifically solicits comments as to possible means of coordinating the contents of proposed Rule 434E with the pertinent provisions of Form S-8 and of proposed Rule 462A relating to registration of delayed or continuous offerings.[125]

Guide 50—Disclosure of Confidential Material to Other Government Agencies

Guide 50 states that, in applying for confidential treatment of a material contract (or a portion thereof) pursuant to Rule 485 of Regulation C

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[123] See Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63712 (Item 7(d) and (e) of proposed Form A), 63715 (Item 8(b) and (a) of proposed Form B) and 63717 (Item 8(a) of proposed Form C)].

[124] See Release No. 33-6190 (February 22, 1980) [45 FR 13438].

[125] See discussion of Guide 4 *supra*.

[Contracts in General] [17 CFR 230.485], the applicant should also state whether or not the applicant is willin to permit the disclosure of such material to other governmental bodies.

The Commission proposes the elimination of this Guide and the addition of Rule 485 of a provision to the effect that (i) the applicant should state whether the applicant will permit the material contract in question to be disclosed to other government agencies; and (ii) such willingness will be a factor in the Commission's consideration of the application.

Guide 51—Release of Price Data on Subscription Offerings by Listed Companies

Guide 51 states that the Division has no objection to dissemination in specified manners of price data on subscription offerings by listed companies prior to effectiveness, provided that such price data is contained in a pre-effective amendment on file with the Commission.

The Commission proposes to delete Guide 51 and include the substance thereof as a new paragraph of Rule 135 [Notice of Certain Proposed Offerings] [17 CFR 230.135]. The new paragraph of Rule 135 would permit dissemination of price data on subscription offerings pursuant to the conditions specified.

Guide 52—Disclosure as to Listing on an Exchange

Guide 52 states that it may be misleading for a registrant to state in its prospectus that a listing application may be filed, unless there is reasonable assurance that the exchange would accept such application.

The Commission proposes to delete Guide 52 and add a corresponding provision to proposed Item 45 of Regulation S-K [Description of Securities to be Registered]. The new provision would allow (but not require) the registrant to state that the securities being registered have been accepted for listing on an exchange and would include the same warning as in Guide 52 if such securities have not actually been accepted for listing.

Guide 53—Secondary Distribution "at the Market"

Guide 53, citing the *Hazel Bishop* case (40 SEC 718), provides that, in cases where a substantial amount of securities are being offered "at the market" in a secondary distribution to the public by, among others, insiders or substantial security holders, without professional underwriters, the issuer and the sellers should undertake to assure compliance with the anti-manipulative provisions of the Exchange Act, notably Rules 10b-2, 10b-6 and 10b-7. In cases of a limited number of sellers, the Guide states that the sellers should enter into contractual arrangements with the issuer to comply with those Rules and should inform the exchange, the brokers and the selling shareholders in the group when the distribution by the respective members of the group is over. In cases of a large number of seller, however, the issuer may simply alert the sellers of their obligation under the Exchange Act to avoid market manipulation. Guide 53 also requires that nay arrangements entered into by the sellers and issuer should be disclosed in the registration statement.

Commentator reaction to Guide 53 was mixed. There were statements that the Guide should be eliminated as obsolete, and other statements that it should be retained with more limited provisions. Those commentators who recommended elimination of the Guide altogether believed that the Guide did not reflect current interpretations of Rule 10b-6 and had been rendered unnecessary by the adoption of Rule 144 and Form S-16.

Those commentators who believed that the Guide should be retained suggested amendments to reflect current Commission practice, to shorten the reference to the *Hazel Bishop* case and to exempt very small shareholders who are part of a larger group of selling shareholders from entering into fromal marketing arrangements. One commentator added that, if the Guide were retained, it should require only that issuers alert shareholders to their statutory obligations in appropriate circumstances.

The Commission is proposing to delete Guide 53 and incorporate the substance of certain provisions thereof in other disclosure rules. Shareholders would be alerted to their obligations to enter into arrangements where necessary to avoid violation of the anti-manipulative rules by adding a paragraph to the Note to Rule 460 [17 CFR 230.460]. The new paragraph would state that the Commission may refuse to accelerate the effective date of a registration statement where the participants in a significant secondary offering at the market have not taken sufficient measures to insure compliance with the anti-manipulative rules.

The Commission is also proposing that proposed

Item 42 of Regulation S-K [Plan of Distribution] require the registrant to describe any arrangements entered into by the registrant and the selling security holders or other steps taken in order to insure compliance with anti-manipulative Rules 10b-2, 10b-6 and 10b-7. This requirement would be of general applicability and would be relevant to continuous at-the-market offerings which might be allowed pursuant to proposed Rule 462A.[126]

Guide 54—Misleading Character of Certain Registrant's Names

Guide 54 warns that registrant's name may be misleading if the name indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent or if the name is the same or substantially the same as the name of another well-known company. In both cases, the Guide states that the only way to cure the misleading character may be to change the registrant's name. In some cases, however, it may be sufficient to disclose on the cover page additional facts, for example, that another well-known company has the same name.

The Commission proposes to delete Guide 54 and include its substance in an instruction to proposed Item 40(a) of Regulation S-K [Cover Page of the Prospectus].[127] As proposed, the instruction would provide that, where the name of the registrant is the same as the name of another well-known company or indicates a line of business in which the registrant is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. The instruction also indicates that, in some circumstances, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

Guide 55—Prospectuses Relating to Interests in Oil and Gas Programs

Guide 55 sets forth the disclosure items to be covered in prospectuses relating to oil and gas drilling programs. The Guide also states that the disclosure items should appear in the sequence indicated by the Guide.

In accordance with the recommendation of the Advisory Committee discussed above, the Commission is recommending that Guide 55 be retained as an industry Guide. The Commission anticipates that the provisions of the Guide will be re-evaluated shortly by separate notice and comment.

Guide 56—Interests of Counsel and Experts in the Registrant

Guide 56 states that if counsel or any expert named in the prospectus has a direct or indirect interest in the registrant (or will have such an interest as a result of the offering), the nature and amount of such interest should be disclosed unless the interest does not exceed $30,000 in the aggregate for a firm or $10,000 for an individual.

The Commission is proposing that Guide 56 be deleted, since disclosure requirements with respect to the interests of experts, including counsel to the registrant, have already been proposed in Item 10 of Form A.[128] That Item, which is proposed to be relocated in Regulation S-K as Item 47 [Interest of Experts Named in Registration Statement], would require disclosure of any "substantial" interest in the registrant or any of its parents or subsidiaries of any expert named in the registration statement, without specifying the dollar amount which would be deemed substantial. Specific comment is requested as to whether the Item should define "substantial" interest by referring to the definition of material direct or indirect interest contained in the recently revised remunneration item of Regulation S-K.[129]

Guide 57—Registration Statement Relating to "Insurance Premium Funding" Programs

Guide 57 sets forth the disclosures which should be contained in a registration statement relating to an insurance premium funding program, e.g., an introductory section and tabular data showing mutual fund performance.

The Commission is proposing that this Guide be retained as an industry Guide. Since few insurance premium funding programs have registered securities in recent years, it is not anticipated that the Guide provision will be amended in the near future.

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[126] See discussion of Guide 4 *supra.*

[127] See discussion of Guide 5 *supra.*

[128] See Release No. 33-6235 (September 2, 1980) [45 FR 63693, 63713].

[129] See Release No. 33-6261 (November 14, 1980) [45 FR 76982].

Guide 58—Disclosure in Prospectus of Registrant's Business Address and Telephone Number

Guide 58 requires the registrant to set forth prominently in the forepart of the prospectus the mailing address and telephone number of its principal executive offices.

The Commission proposes that Guide 58 be deleted and its provisions recast as part of proposed Item 41 of Regulation S-K [Summary Information].[130]

Guide 59—Summary of Disclosure in the Prospectus

Guide 59 states that, immediately following the cover page of a prospectus on Forms S-1 or S-2, there should be set forth a short summary of the contents of the prospectus, highlighting the registrant's business, plan of operation of a new business, intended use of proceeds, material risks and summary financial information. The Guide includes a tabular format which should be substantially followed for the presentation of the summary financial information.

The commentators, with one exception, strongly endorsed the concept of having summary disclosure in the forepart of an S-1 or S-2 prospectus and suggested that a summary be required in any lengthy or comples prospectus, proxy statement or information statement.

The Commission formalized the summary concept in Item 2 of proposed Form A[131] That Item, based in part on Guide 59, would require (i) a brief description of the business conducted by the issuer; (ii) a brief description of the material terms and features of the offering; (iii) certain selected financial data;[132] and (iv) an appropriate tabular presentation of any material dilution of the interests of the purchasers or existing shareholders. The Commission is proposing that Item 2 of proposed Form A be relocated in Regulation S-K as proposed Item 41 [Summary Information] and that additional material based on Guide 59 be added to that Item, requiring the registrant to describe briefly with respect to the offering the intended use of proceeds, any material risks and, in the case of certain new registrants, the plan of operation. Guide 59 is proposed to be withdrawn.

As discussed above in connection with Guides 6, 47 and 58, the Commission proposes to codify the requirements of those Guides in proposed Item 41, that is, to require disclosure of risk factors (Guide 6), the registrant's business address and telephone number (Guide 58) and a statement by foreign registrants as to the enforceability of civil liabilities under the federal securities law (Guide 47) in the summary. In addition, the Commission proposes to codify in proposed Item 41 the existing staff practice of requiring registrants of a debt offering to state the aggregate amount of outstanding debt which would be deemed senior to the securities being registered. Comment is requested as to the relationship which the information contained in the summary should bear to the information required on the cover page and elsewhere in the prospectus.

Guide 60—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships

Guide 60 describes in detail the information which should be included in a registration statement relating to the offer and sale of interests in real estate limited partnerships. The preface to the Guide states that "where appropriate" the specific items of information should be presented in the order in which they appear in the Guide.

In accordance with the recommendation of the Advisory Committee discussed above, the Commission recommends that this Guide be retained as an industry Guide and anticipates that, as the result of a joint effort with the North American Securities Administrators Association, a release proposing revisions to the Guide will be published in the near future.

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[130] See discussion of Guide 59 *infra*.

[131] See Release No. 33-6235 (September 2, 1980) [45 FR 63693, at 63710-11].

[132] It should be noted that the Office of the Chief Accountant is now considering comments which it received in response to an advance concept release with respect to, *inter alia*, whether Item 10 of Regulation S-K [Selected Financial Data] should include present historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends. *See* Release No. 33-6196 (March 7, 1980) [45 FR 16498].

Guide 61—Statistical Disclosure by Bank Holding Companies

Guide 61 specifies the statistical information which should be included in the description of business of a bank-holding company filing a registration statement in which financial statements are required. Exchange Act Guide 3—the Exchange Act counterpart of Guide 61—specifies the statistical information which should be included in the description of business of a bank-holding company filing a registration statement on Form 10, a proxy or information statement relating to merger, consolidation, acquisition or similar matter or in an annual report filed on Form 10-K.

In accordance with the recommendations of the Advisory Committee discussed above, the Commission is proposing that Guide 61 an Exchange Act Guide 3 be retained as industry Guides. Since Guide 61 was recently published in revised form, after separate notice-and comment process[133], the Commission does not anticipate that it will be revised again in the near future.

Guide 62—Disclosure of Projections of Future Economic Performance

Guide 62 and Exchange Act Guide 5 set forth the views of the Division on the voluntary disclosure of projections of future economic performance. These Guides encourage the use of projections and discuss at some lenght the way in which projections should be presented, that is, disclosing the basis of the projections, the limitations of the projections and variances between projected and actual results on a continuing basis.

The Commission is proposing that these Guide be withdrawn and relocated as proposed Item 52 of Regulation S-K [Commission Policy on Projections]. The Commission realizes that the provisions relating to projections are not mandatory, but instead represent a staement of Commission policy. However, because of the potential importance of projections in a variety of filings, the Commission is proposing inclusion of the substance of Guide 62 (and Exchange Act Guide 5) in Regulation S-K, the general repository for provisions relating to substantive disclosure. The Commission does not, by moving these provisions into Regulation S-K, intend to create any obligation to make projections or to define liability for projections. The "safe-harbor" provisions for projections in Rule 175 [17 CFR 230.175] [Liability for Forward Looking Statements by Issuers] would continue to apply in the same manner. Further, the Commission is not proposing any revision of the provisions of Guide 62 (or Exchange Act Guide 5), for such provisions were the product of a recent lengthy and complex rule-making proceeding.[134] Specific comment is requested, as to whether the provisions of this Guide should be modified in any substantive respect, for example, whether there should be a maximum period for projections if assumptions are not disclosed.

Guide 63—Disclosure Relating to Management Remuneration by Certain Foreign Private Issuers

Guide 63 provides that in cases where foreign law does not require a foreign private issuer (other than a North America issuer) to disclose the remuneration paid to each director and officer, the Division will allow such issuer to report only aggregate remuneration paid to directors and officers.

The Commission is proposing that Guide 63 be deleted and that the substance thereof be added as an instruction prefacing proposed Item 21 of Regulation S-K [Management Remuneration and Transactions].[135]

Exchange Act Guides

Guide 1—Summary of Operations

See discussion of Securities Act Guide 22 *supra.*

Guide 2—Disclosure of Extractive Reserves and Natural Gas Supplies

See discussion of Securities Act Guide 28 *supra.*

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[133] *See* Release No. 33-6221 (July 8, 1980) [45 FR 47138].

[134] *See* Release Nos. 33-5992 (November 7, 1978) [43 FR 53250] and 33-5699 (April 23, 1976) [41 FR 19986].

[135] Proposed Item 21 of Regulation S-K [Management Remuneration] (based on existing Item 4) was recently revised as the result of a separate notice and comment process *See* Release No. 33-6261 (November 4, 1980) [45 FR 76982].

Guide 3—Statistical Disclosure by Bank Holding Companies

See discussion of Securities Act Guide 61, *supra.*

Guide 4—Integrated Reports to Shareholders

Guide 4 sets forth the conditions under which quarterly or annual reports to shareholders may be incorporated by reference in Forms 10-K and 10-Q in satisfaction of certain of the disclosure requirements of those Forms.

In veiw of its procedural nature an in view of its recent amendment,[136] the Commission is proposing that Guide 4 be deleted and recast without substantive change as new Rule 0-10 of the Rules of General Application under the Exchange Act.

Guide 5—Disclosure of Projections of Future Economic Performance

See discussion of Securities Act Guide 62 *supra.*

F. Table of Rules Affected By Proposals

The following table sets forth the rules under the Securities Act and under the Exchange Act which would be affected by the proposed revisions of the Guides. The proposed rule changes are based on 17 of the existing Guides (and one release). The table indicates the rules affected in Regulation C and in the general rules under the Securities Act and the Exchange Act, as well as whether such rules are old or new, and the Guide or Guides upon which such proposed revisions are based.

IV. *REQUEST FOR COMMENTS*

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact on the proposals contained herein, are requested to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in achieving the objectives set forth in this release.

The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Securities Act and the Exchange Act.

V. TEXT OF PROPOSALS

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. By amending the heading of §229.1 and redesignating it as §229.10 as follows:

§229.10 Application.

(The text of this section is the same as the text of present §229.1)

2. By amending §229.20 to read as follows:

§229.20 Business.

* * * *

Item 3. Legal Proceedings.

(The text of this item is the same as the text of present Item 5 of §229.20.)

* * * *

3. By adding §229.21 to read as follows:

§229.21 Financial information.

Item 10. Selected financial data.

(The text of this item is the same as the text of present Item 10 in §229.20.)

* * * *

Item 11. Supplementary financial information.

(The text of this item is the same as the text of present Item 12 in §229.20.)

Item 12. Management's discussion and analysis of financial condition and results of operations.

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[136] *See* Release No. 33-6231 (September 2, 1980) [45 FR 63630].

TABLE III

PROPOSED REVISIONS TO RULES BASED ON CHANGES IN GUIDES

RULES AFFECTED		OLD	NEW	GUIDES ON WHICH REVISION IS BASED
REGULATION C (17 CFR 230)				
400A	Pre-filing Conferences		X	1
400B	Supplemental Information		X	16, 17, 45
401	Requirement as to Proper Form	X		3
424A	Reports or Memoranda Concerning the Registrant		X	42
[425	Statement Required in All Prospectuses-This rule is proposed to be rescinded and recast as a mandatory disclosure requirement in proposed Item 40 of Regulation S-K, Cover Page of the Prospectus]			
432	Application of Amendments to Rules Governing Contents of Prospectus	X		3
434E	Revision of Prospectuses Where a Company and Its Employee Plan Have Different Fiscal Years		X	49
435	Formal Requirements as to Consents	X		38
436	Consents Required in Special Cases	X		38
460	Preparation and Distribution of Preliminary Prospectus	X		17, 19, 35, 46, 53

TABLE III (cont.)

PROPOSED REVISIONS TO RULES

RULES AFFECTED		OLD	NEW	GUIDES ON WHICH REVISION IS BASED
461	Requests for Acceleration of Effective Date	X		17, 43
462A	Delayed or Continuous Offering and Sale of Securities		X	4
485	Contracts in General	X		50
OTHER				
GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933 (17 CFR 230)				
135	Notice of Certain Proposed Offering	X		51
GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934 (17 CFR 240)				
0-10	Integrated Reports to Shareholders			4 (Exchange Act)
15c 2-8	Delivery of Prospectus			19, Release No. 33-4968

(The text of this item is the same as the text of present Item 11 of §229.20.)

* * * *

4. By adding §229.22 to read as follows:

§229.22 Management.

Item 20. Directors and executive officers.

(The text of this item is the same as the text of present Item 3 of §229.20.)

* * * *

Item 21. Management remuneration.

(The text of this item is the same as the text of present Item 4 of §229.20, except that the following instruction is added before the text of the item:)

Instruction: Foreign private issuers (other than North American issuers) may respond to this Item 21 by indicating the aggregate payments or benefits paid to or accrued on behalf of all directors and executive officers as a group. However, if such a registrant discloses to its shareholders or otherwise makes public the information specified in this Item 21 for individually named directors and executive officers, then such information should also be disclosed.

* * * *

5. By adding §229. 23 to read as follows:

§229.23 Securities of registrant.

Item 30. Market price of the registrant's common stock and related security holder matters.

(The text of this item is the same as the text of present Item 9 of §229.20.)

* * * *

Item 31. Security ownership of certain beneficial owners and management.

(The text of this item is the same as the text of present Item 6 of §229.20.)

* * * *

6. By adding §229.24 to read as follows:

§229.24 Distribution of securities.

Item 40. Cover page of the prospectus.

(a) The following information should appear on the cover page of the prospectus with appropriate cross-references to more detailed discussion elsewhere in the prospectus:

(1) Name of the registrant;

(2) Description and amount of securities offered;

(3) The following statement in capital letters printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATIONS TO THE CONTRARY IS A CRIMINAL OFFENSE";

(4) If applicable, make reference to material risks in connection with the purchase of the securities printed, in bold-face roman type at least as high as ten-point modern type and at least two points leaded, with a cross reference to further discussion in the prospectus.

(5) The date of the prospectus;

(6) Any materials required by the law of any state in which the securities are to be offered.

Instruction: Where the name of the registrant is the same name as the name of another well-known company or indicates a line of business in which the registrant is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

(b) (The text of Item 40(b) is the same as the text of Item 1 of proposed Form A [45 FR 63710] except that the following instructions are added.)

* * * *

Instructions.

* * * *

4. (The text of Instruction 4 is the same as the text of Instuction 4 to Item 3 of proposed Form B [45 FR 63715].)

* * * *

5. Where an underwriter has received an over-allotment option, maximum-minimum information should be presented in the price table based on the purchase of all or none of the shares subject to the option. The terms of the option should be described in connection with the other compensation to underwriters rather than on the cover page.

6. The total of "other expenses of issuance and distribution" called for by Part II of the registration statement, stated separately for the registrant and for the selling security holders (if any), should be set forth in a note to the net proceeds column of the distribution table.

7. In addition, for registrants not subject to the reporting provisions of Sections 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the

registration statement, the disclosure on the cover page of a preliminary prospectus that is circulated should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered.

Item 41. Summary information.

(The text of Item 41 is the same as the text of Item 2 of proposed Form a [45 FR 63710-11], except that the following paragraphs are added.)

* * * *

(e) The complete mailing address, including zip code, and the telephone number, including area code, of the principal executive office of the registrant;

(f) A brief description of the intended use of proceeds;

(g) A brief description of the principal factors which make the offering one of high risk or speculative. These factors may be due to such matters as an absence of an operating history of the registrant, and absence of profitable operations in recent periods, an erratic financial history, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or the absence of a previous market for the registrant's securities.

(h) In the case of an offering of debt securities, the aggregate amount of outstanding debt which would be deemed senior to the securities being registered;

(i) If the registrant has not previously filed a registration statement under the Securities Act or the Exchange Act, and has not received revenues from operations for each of the three fiscal years immediately prior to the filling of the registration statement, a brief description of the information relating the registrant's plan of operation required by paragraph (2) of Item 1 of Regulation S-K [Description of Business].

(j) In the case of a foreign private registrant, a statement of how the enforcement by investors of civil liabilities under the federal securities laws may be affected by the fact that the registrant is located in a foreign country, including, but not limited to the following information where applicable:

(1) that certain of its officers and directors are residents of a foreign country;

(2) that certain underwriters and experts named in the registration statement are residents of a foreign country;

(3) that all or a substantial portion of the assets of the registrant and of said persons are located outside the United States,

(4) whether investors will be able to effect service of process within the United States upon such persons;

(5) whether investors will be able to enforce against such persons judgments obtained in United States courts predicated upon the civil liability provisions of the federal securities laws;

(6) whether the appropriate foreign courts would enforce judgments of United States courts obtained in actions against such persons predicated upon the civil liability provisions of the federal securities laws; and

(7) whether the appropriate foreign courts would enforce, in original actions, liabilities against such persons predicated solely upon the federal securities laws.

If any portions of such disclosures are stated to be based upon an opinion of counsel, such counsel should be named in the prospectus and an appropriate manually signed consent to the use of such name and opinion should be included in the registration statement.

Item 42. Plan of distribution.

(The text of Item 42 is the same as the text of Item 3 of proposed Form A [45 FR 63711] except that the following paragraphs are added.)

* * * *

(e) Where an underwriter of a new or speculative issue of securities is newly organized or reactivated, or only recently registered as a broker-dealer, and especially where the principal business function of such underwriter will be to sell the securities to be registered, or the promoters of the registrant are identified with the underwriter; these facts should be disclosed in the prospectus. Sufficient details should be given to allow full appreciation of the underwriter's experience and its relationship with the registrant, promoters and controlling persons.

(f) To the extent not otherwise set forth on the cover page, describe the discounts and commission to be allowed or paid to the underwriters, and any other cash, expenses, securities, contracts or other consideration to be received by any underwriter in connection with the sale of the securities. Such description of consideration shall include, but is not necessarily limited to:

(1) total expenses payable by the registrant, whether accountable or non-accountable, to or on behalf of the underwriters which would normally be paid by the underwriters;

(2) financial, consulting, investment counseling, and finders' fees;

(3) securities given by or acquired from the registrant or selling shareholder(s) or from any person directly or indirectly controlling or controlled thereby or from any person under direct or indirect common control therewith in connection with the offering;

(4) where an underwriter receives U.S. currency as a result of an offering but remits the proceeds to the issuer in a foreign currency, any material amount of profit accruing to the underwriter from conversion of the proceeds of the offering into a foreign currency;

(5) any arrangement whereby the underwriter has the right to designate a member or members of the board of directors of the registrant. (The registrant should disclose the identity of any director so designated, and indicate whether or not a person so designated or allowed to be designated by the underwriter is a directr, officer partner, employee or affiliate of the underwriter.)

Instruction. Generally, it will be assumed for the purpose of disclosure that options, warrants, rights, stock or other securities sold or given to the underwriters within 12 months before the filing of the registration statement or proposed to be sold or given to them thereafter were issued in connection with such offering. Accordingly, the potential profits which may be received upon the sale of such options, warrants rights, stock or other securities should be identified as additional underwriting compensation for such offering, whether or not such underwriters withdraw and other underwriters are substituted.

(g) With respect to a distribution by persons other than the registrant, who include affiliates of the registrant, of more than 10% of the securities of a class outstanding in an at-the market offering, or any at-the-market offering by the registrant registered pursuant to Rule 462A (a)(i), and in each case where there is no professional underwriter or conventional underwriting agreement, describe any arrangements entered into by the participants in such an offering in order to insure comliance with Rules 10b-2 [17 CFR 240.10b-2) 10b-6 [17 CFR 10b-6) and 10b-7 [17 CFR 240.10b-7) under the Exchange Act.

(h) Identify any finder or promoter and, if applicable, describe the nature of any affiliation between such finder or promoter and the registrant, its officers, directors, underwriters, principal stock holders, finders and promoters (including, in each case, affiliates or associates thereof).

(k) Where there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past five years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (a) the net tangible book value per share before and after the distribution; (b) the amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and (c) the amount of the immediate dilution from public offering price which will be absorbed by such purchasers.

Item 43. Use of proceeds to registrant.

(The text of Item 43 is the same as the text of Item 4 of proposed Form A [45 FR 63711] except that the following instruction is added:)

* * * *

Instructions.

* * * *

6. The registrant may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately discussed.

7. Where the registrant is making a simultaneous offering in the United States and in a foreign country, the anticipated proceeds from both offerings should be shown.

Item 44. Selling security holders.

(The text of Item 44 is the same as the text of Item 5 of proposed Form A [45 FR 63711].)

* * * *

Item 45. Securities to be registered.

(The text of Item 45 is the same as the text of Item 6 of proposed Form A [45 FR 63711-12] excet that the following subparagraphs are added.)

(a) *Capital stock to be registered.*

* * * *

(6) Briefly describe potential liabilities imposed on shareholders under state statutes, for example, to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(7) Where the securities being registered are to be offered before the charter amendment authorizing the issuance of such securities becomes effective pursuant to applicable state law, appropriate disclosure of that fact should be made.

(8) Where securities are being registered for the first time or where there is a substantial disparity between the offering price and the market price, the various factors considered in determining the offering price should be described.

(9) Regarding dividends with respect to the securities being registered, the registrant should state the frequency and amount of any such dividends paid during the past two years and briefly describe any restriction(s) on the registrant's present or future ability to pay such dividends.

(10) Where registrants have a record of paying no dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, to make a statement of that fact in the filing. Registrants which having a history of paying dividends are also encouraged to indicate whether there is a present expectation that dividends will continue to be paid in the future.

(b) *Debt securities to be registered.*

* * * *

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in Section 1232 of the Internal Revenue Code (26 U.S.C. §1232), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the amount of such original issue discount and any tax effects thereof pursuant to Section 1232 should be stated.

(c) *Warrants, Rights and Convertible Securities.*

* * * *

(5) With respect to convertible securities which are subject to redemption and stock purchase warrants which are callable,

(i) whether the right to convert or purchase will be lost unless it is excerised before the redemption or call;

(ii) the kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published; and
(iii) i the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption, for example, by reading newspapers in which the notice of redemption or call may be published.

(6) With respect to warrants, rights or convertible securities, the various factors considered in determining the exercise price should be described.

* * * *

(e) *Market information*. Furnish the following information with respect to the securities being registered:

(1) Market (or absence of market) for securities being registered.

(i) If there is not market for equity securities being registered (excluding limited or sporadic quotations), furnish a statement to that effect. (The existence of limited or sporadic quotations should not of itself be deemed to consitute an established trading market. If any known facts indicate the absence of an established trading market, reference to quotations in the prospectus should be qualified by appropriate explanation.)

(ii) If the securities being registered have been accepted for listing on an exchange, the exchange may be identified. However, unless there is reasonable assurance that the securities to be offered will be acceptable to a securities exchange for listing, the prospectus may be misleading if it conveys the impression that the registrant may apply for listing of the securities on an exchange or that the underwriters may request the registrant to apply for such listing.

(iii) If there is an established market for such securities, identify the principal market or markets on which such securities are traded.

(iv) If warrants, options or rights (other than exchange traded options) are being registered, state the following:

(A) the amount of such securities outstanding; and

(B) the basis of trading in such securities, including where applicable, that such rights would trade separately from other securities and that such rights would be quoted on the basis of a single right, even though several rights may be necessary to purchase one share.

(v) Describe any material impact or potential impact (including dilution and market overhang) upon security holders, upon the registrant, and upon the market for registrant's securities which may result from:

(A) options for, warrants, or securities convertible into, securities of the same class as those being registered;

(B) outstanding securities of the same class as those being registered held by affiiates or constituting restricted stock for purposes of Rule 144 [17 CFR 230.144]; and

(C) securities being registered for a delayed or continuous offering, or securities of the same class as the securities being registered being offered pursuant to another effective registration statement (unless such registered securities are being offered pursuant to an employee benefit plan or a dividend reinvestment plan).

Instruction. If applicable, the additional disclosure with respect to dilution should ordinarily include the following: that for the life of the options or warrants the holders thereof are give, at nomininal cost, the opportunity to profit from a rise in the market for securities of the class subjet to thereto, with a resulting dilution in the interest of security holders; that the terms on which the issuer could obtain additional capital during that period may be adversely affected; and that the holders of such options or warrants might be expected to exercise them at a time when the issuer would, in all likelihood, be able to obtain any needed capital by a new offering of securities on terms more favorable than those provided for by the options or warrants.

(2) The value placed on securities outstanding of the same class of the securities being registered should be stated as follows:

(i) If a principal market for the subject securities is an exchange, state the high and low prices for the securities as reported in the consolidated transaction system or, if not so reported, on such principal exchange for each quarterly period during the past two years.

(ii) If a principal market for the subject securities is the over-the-counter market, state the range of high and low bid quotations for each quarterly period during the past two years and the source of such quotations.

(iii) If no market exists for the subject securities, the manner in which the value of outstanding securities has been estimated should be set forth, together with appropriate caveat, e.g., that such assigned value may bear no relationship to the assets, earnings or other criteria of value applicable to the registrant.

(f) *Information with respect to foreign registrants.*

If the registrant is a foreign registrant, (1) state whether or not there are, and describe, any limitations on the right of non resident or foreign owners to hold or vote such securities imposed by foreign law or by the charter or other constituent document of the registrant;

(2) identify the trading market for the securities being registered in foreign as well as U.S. markets;

(3) describe any governmental laws, decrees or regulations in the country in which the registrant is organized affecting the remittance of dividends, interest and other payments to nonresident holders of the securities being registered;

(4)outline briefly all taxes, including withholding provision, to which United States security holders are subject under existing laws and regulations of the foreign country of origin; and

(5) describe briefly pertinent provisions of any reciprocal tax treaties between such foreign country and the United States regarding withholding and, if there are no such treaties, so state.

Item 46. Other expenses of issuance and distribution.

(The text of Item 46 is the same as the text of Item 9 of proposed Form A [45 FR 63713].)

* * * *

Item 47. Interest of experts named in registration statement.

(The text of Item 47 is the same as the text of Item 10 of proposed Form A [45 FR 63713].)

* * * *

Item 48. Indemnification of directors and officers.

(The text of Item 48 is the same as the text of Item 11 of proposed Form A [45 FR 63713], except that the following paragraphs are added.)

* * * *

(b) State the general effect on any charter provisions, bylaws, contract, arrangement, or statute under which any controlling person of the registrant is insured or indemnified in any manner against any liability arising under the Securities Act of 1933.

(c) If the underwriting agreement provides for indemnification by the registrant of the underwriters or their controlling persons against any liability arising under the securities Act of 1933, furnish a brief description of such indemnification provisions.

(d) If Note (a) to Rule 460 [17 CFR 230.460] does not apply because acceleration of the effective date of the registration statement is not to be requested, and waivers have not been obtained as required in Note (a) to Rule 460 [17 CFR 230.460], a brief description of the indemnification provisions relating to directors, officers and controlling persons of the registrant against liabilities arising under the Securities Act of 1933 shall be included in the prospectus, together with a statement in substantially the following form:

"Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the act and is therefore unenforceable."

Item 49. Recent sales of unregistered securities.

(The text of Item 49 is the same as the text of Item 14 of proposed Form C [45 FR 63717-18].)

* * * *

7. By adding §229.25 to read as follows:

§229.25 Other.

Item 50. Availability of information relating to the registrant.

Registrants subject to the filing requirements of section 15(d) of the Exchange Act should describe briefly the nature and frequency of reports which will be made to the purchasers of the securities being registered, specifying whether or not such reports will contain certified financial information.

Item 51. Exhibits.

(The text of this item is the same as the text of present Item 7 of §229.20, except that the following material is added.)

* * * *

TABLE I

Securities Act of 1933—Frequently Used Forms

	S-1	S-2	S-7	S-8	S-11	S-14	S-15	S-16
(23) Consents of experts	X	X	X	X	X	X	X	X

* * * *

(b) Description of Exhibits

* * * *

(3) Articles of incorporation and by-laws.

***Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority; and in such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(23) Consents of experts. All written consents, together with a list thereof, filed pursuant to Section 7 of the Securities Act of 1933.

Item 52. Commission policy on projections.

The Commission encourages the use in documents specified in Rule 175 [17 CFR 230.175] of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating such projections.

A. Basis for projections.

The Commission filings its good faith assessment of a registrant's future performance. Management must, however, have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a company always must have had such a history or experience in order to formulate projections with a reasonable basis.

An outstanding review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there should also be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant and any other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

B. Format for projections.

In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditional projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income and earnings per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items.

Revenues, net income, and earnings per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings from continuing operations, or income before extraordinary items in addition to or in lieu of net income. It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income.

The period that may appropriately be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current